

107TH CONGRESS
2D SESSION

H. R. 5160

To promote corporate responsibility.

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2002

Mr. GEPHARDT (for himself, Mr. SHOWS, Mr. HOLDEN, Mr. PHELPS, Ms. CARSON of Indiana, Mr. RANGEL, Mr. LaFALCE, Mr. CONYERS, Mr. GEORGE MILLER of California, Mr. MATSUI, Ms. LEE, Mr. DICKS, Mr. WAXMAN, Ms. SLAUGHTER, Mr. CARDIN, Mr. TIERNEY, Mr. LYNCH, Mr. BONIOR, Mr. BARRETT of Wisconsin, and Mr. FRANK) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on Ways and Means, the Judiciary, and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To promote corporate responsibility.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Business, Investors’, and Employees’ Bill of Rights Act
6 of 2002”.

7 (b) **TABLE OF CONTENTS.**—The table of contents is
8 as follows:

Sec. 1. Short title and table of contents.

TITLE I—IMPOSING TOUGH CRIMINAL PENALTIES ON CORRUPT CHIEF EXECUTIVE OFFICERS

- Sec. 101. Criminal penalties for altering documents.
- Sec. 102. Criminal penalties for defrauding shareholders of publicly traded companies.
- Sec. 103. Review of Federal sentencing guidelines for obstruction of justice and extensive criminal fraud.
- Sec. 104. Debts nondischargeable if incurred in violation of securities fraud laws.
- Sec. 105. Increased protection of employees wages under chapter 11 proceedings.
- Sec. 106. Statute of limitations for securities fraud.
- Sec. 107. Protection for employees of publicly traded companies who provide evidence of fraud.
- Sec. 108. Establishment of a Retirement Security Fraud Bureau.
- Sec. 109. Criminal penalties for mail and wire fraud.
- Sec. 110. Amendment to sentencing guidelines relating to certain white-collar offenses.
- Sec. 111. Temporary freeze authority for the Securities and Exchange Commission.
- Sec. 112. Increased criminal penalties under Securities Exchange Act of 1934.
- Sec. 113. Corporate responsibility for financial reports.

TITLE II—STOPPING OFFSHORE TAX HAVENS

- Sec. 201. Prevention of corporate expatriation to avoid United States income tax.
- Sec. 202. Inclusion in income of certain deferred amounts of insiders of corporations which expatriate to avoid United States income tax.

TITLE III—MAKING EXECUTIVES ACCOUNTABLE

- Sec. 301. Performance-based compensation exception to \$1,000,000 limitation on deductible compensation not to apply in certain cases.
- Sec. 302. Inclusion in gross income of funded deferred compensation of corporate insiders if corporation funds defined contribution plan with employer stock.
- Sec. 303. Golden parachute excise tax to apply to deferred compensation paid by corporation after major decline in stock value or corporation declares bankruptcy.
- Sec. 304. Governance practices to prohibit insider loans.
- Sec. 305. Removal of unfit corporate officers.
- Sec. 306. Disgorgement required.
- Sec. 307. CEO and CFO accountability for disclosure.
- Sec. 308. Increased compensation limit not to result in reduced benefits for the nonhighly compensated.
- Sec. 309. Matching contributions not taken into account for minimum contribution requirements under top-heavy plan rules.

TITLE IV—ASSURING THE INTEGRITY OF WALL STREET AND RESTORING FAITH IN THE MARKETS

Subtitle A—Improving Corporate Governance and Providing Investors with Honest Information

- Sec. 401. Real-time disclosure of financial information.
- Sec. 402. Improved transparency of corporate disclosures.
- Sec. 403. Improvements in reporting on insider transactions and relationships.
- Sec. 404. Analyst conflicts of interest.
- Sec. 405. Independent directors and other corporate governance requirements.

Subtitle B—Strengthening Auditor Independence and Industry Oversight

CHAPTER 1—AUDITOR INDEPENDENCE

- Sec. 411. Services outside the scope of practice of auditors.
- Sec. 412. Preapproval requirements.
- Sec. 413. Audit partner rotation.
- Sec. 414. Auditor reports to audit committees.
- Sec. 415. Conforming amendments.
- Sec. 416. Conflicts of interest.
- Sec. 417. Study of mandatory rotation of registered public accounting firms.
- Sec. 418. Commission authority.
- Sec. 419. Considerations by appropriate State regulatory authorities.

CHAPTER 2—INDUSTRY OVERSIGHT

- Sec. 421. Auditor oversight.
- Sec. 422. Improper influence on conduct of audits.
- Sec. 423. Enhanced oversight of periodic disclosures by issuers.
- Sec. 424. Retention of records.
- Sec. 425. Authorization of appropriations of the Securities and Exchange Commission.
- Sec. 426. Enforcement of audit committee governance practices.
- Sec. 427. Review of corporate governance practices.
- Sec. 428. Study of enforcement actions.
- Sec. 429. Study of credit rating agencies.
- Sec. 430. Study of investment banks.
- Sec. 431. Study of model rules for attorneys of issuers.

Subtitle C—General Provisions

- Sec. 441. Enforcement authority.
- Sec. 442. Exclusion for investment companies.
- Sec. 443. Definitions.

TITLE V—ENHANCING PENSION PROTECTION FOR EMPLOYEES

Subtitle A—Improvements in Disclosure

- Sec. 501. Pension benefit information.
- Sec. 502. Immediate warning of excessive stock holdings.
- Sec. 503. Additional fiduciary protections relating to lockdowns.
- Sec. 504. Report to participants and beneficiaries of trades in employer securities.
- Sec. 505. Provision to participants and beneficiaries of material investment information in accurate form.
- Sec. 506. Enforcement of information and disclosure requirements.

Subtitle B—Diversification Requirements

- Sec. 511. Freedom to make investment decisions with plan assets.
- Sec. 512. Effective date of subtitle.

Subtitle C—Employee Representation

Sec. 521. Participation of participants in trusteeship of individual account plans.

Subtitle D—Executive Parity

Sec. 531. Insider trades during pension fund blackout periods prohibited.

Subtitle E—Increased Accountability

Sec. 541. Bonding or insurance adequate to protect interest of participants and beneficiaries.

Sec. 542. Liability for breach of fiduciary duty.

Sec. 543. Preservation of rights or claims.

Sec. 544. Office of Pension Participant Advocacy.

Sec. 545. Additional criminal penalties.

Sec. 546. Study regarding insurance system for individual account plans.

Subtitle F—Investment Advice for Participants and Beneficiaries

Sec. 551. Independent investment advice.

Sec. 552. Tax treatment of qualified retirement planning services.

Subtitle G—General Provisions

Sec. 561. General effective date of title.

Sec. 562. Plan amendments.

1 **TITLE I—IMPOSING TOUGH**
 2 **CRIMINAL PENALTIES ON**
 3 **CORRUPT CHIEF EXECUTIVE**
 4 **OFFICERS**

5 **SEC. 101. CRIMINAL PENALTIES FOR ALTERING DOCU-**
 6 **MENTS.**

7 (a) IN GENERAL.—Chapter 73 of title 18, United
 8 States Code, is amended by adding at the end the fol-
 9 lowing:

1 **“§ 1519. Destruction, alteration, or falsification of**
2 **records in Federal investigations and**
3 **bankruptcy**

4 “Whoever knowingly alters, destroys, mutilates, con-
5 ceals, covers up, falsifies, or makes a false entry in any
6 record, document, or tangible object with the intent to im-
7 pede, obstruct, or influence the investigation or proper ad-
8 ministration of any matter within the jurisdiction of any
9 department or agency of the United States or any case
10 filed under title 11, or in relation to or contemplation of
11 any such matter or case, shall be fined under this title,
12 imprisoned not more than 20 years, or both.

13 **“§ 1520. Destruction of corporate audit records**

14 “(a) Any accountant who conducts an audit of an
15 issuer of securities to which section 10A(a) of the Securi-
16 ties Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies,
17 shall maintain all documents (including electronic docu-
18 ments) sent, received, or created in connection with any
19 audit, review, or other engagement for such issuer for a
20 period of 20 years from the end of the fiscal period in
21 which the audit, review, or other engagement was con-
22 cluded.

23 “(b) Whoever knowingly and willfully violates sub-
24 section (a) shall be fined under this title, imprisoned not
25 more than 5 years, or both.

1 “(c) Nothing in this section shall be deemed to dimin-
 2 ish or relieve any person of any other duty or obligation,
 3 imposed by Federal or State law or regulation, to main-
 4 tain, or refrain from destroying, any document.”.

5 (b) CLERICAL AMENDMENT.—The table of sections
 6 at the beginning of chapter 73 of title 18, United States
 7 Code, is amended by adding at the end the following new
 8 items:

“1519. Destruction, alteration, or falsification of records in Federal investiga-
 tions and bankruptcy.

“1520. Destruction of corporate audit records.”.

9 **SEC. 102. CRIMINAL PENALTIES FOR DEFRAUDING SHARE-**
 10 **HOLDERS OF PUBLICLY TRADED COMPANIES.**

11 (a) IN GENERAL.—Chapter 63 of title 18, United
 12 States Code, is amended by adding at the end the fol-
 13 lowing:

14 **“§ 1348. Securities fraud**

15 “Whoever knowingly executes, or attempts to execute,
 16 a scheme or artifice—

17 “(1) to defraud any person in connection with
 18 any security registered under section 12 or 15(d) of
 19 the Securities Exchange Act of 1934 (15 U.S.C. 78l,
 20 78o(d)) or section 6 of the Securities Act of 1933
 21 (15 U.S.C. 77f); or

22 “(2) to obtain, by means of false or fraudulent
 23 pretenses, representations, or promises, any money
 24 or property in connection with the purchase or sale

1 of any security registered under section 12 or 15(d)
 2 of the Securities Exchange Act of 1934 (15 U.S.C.
 3 78l, 78o(d)) or section 6 of the Securities Act of
 4 1933 (15 U.S.C. 77f),
 5 shall be fined under this title, or imprisoned not more than
 6 25 years, or both.”.

7 (b) CLERICAL AMENDMENT.—The table of sections
 8 at the beginning of chapter 63 of title 18, United States
 9 Code, is amended by adding at the end the following new
 10 item:

“1348. Securities fraud.”.

11 **SEC. 103. REVIEW OF FEDERAL SENTENCING GUIDELINES**
 12 **FOR OBSTRUCTION OF JUSTICE AND EXTEN-**
 13 **SIVE CRIMINAL FRAUD.**

14 Pursuant to section 994 of title 28, United States
 15 Code, and in accordance with this section, the United
 16 States Sentencing Commission shall review and amend, as
 17 appropriate, the Federal Sentencing Guidelines and re-
 18 lated policy statements to ensure that—

19 (1) the guideline offense levels and enhance-
 20 ments for an obstruction of justice offense are ade-
 21 quate in cases where documents or other physical
 22 evidence are actually destroyed or fabricated;

23 (2) the guideline offense levels and enhance-
 24 ments for violations of section 1519 or 1520 of title

1 18, United States Code, as added by this Act, are
2 sufficient to deter and punish that activity;

3 (3) the guideline offense levels and enhance-
4 ments under United States Sentencing Guideline
5 2B1.1 (as in effect on the date of enactment of this
6 Act) are sufficient for a fraud offense when the
7 number of victims adversely involved is significantly
8 greater than 50; and

9 (4) a specific offense characteristic enhancing
10 sentencing is provided under United States Sen-
11 tencing Guideline 2B1.1 (as in effect on the date of
12 enactment of this Act) for a fraud offense that en-
13 dangers the solvency or financial security of 1 or
14 more victims.

15 **SEC. 104. DEBTS NONDISCHARGEABLE IF INCURRED IN**
16 **VIOLATION OF SECURITIES FRAUD LAWS.**

17 Section 523(a) of title 11, United States Code, is
18 amended—

19 (1) in paragraph (17), by striking “or” after
20 the semicolon;

21 (2) in paragraph (18), by striking the period at
22 the end and inserting “; or”; and

23 (3) by adding at the end, the following:

24 “(19) that—

25 “(A) arises under a claim relating to—

1 “(i) the violation of any of the Fed-
2 eral securities laws (as that term is defined
3 in section 3(a)(47) of the Securities Ex-
4 change Act of 1934 (15 U.S.C.
5 78c(a)(47)), any State securities laws, or
6 any regulations or orders issued under
7 such Federal or State securities laws; or

8 “(ii) common law fraud, deceit, or
9 manipulation in connection with the pur-
10 chase or sale of any security; and

11 “(B) results, in relation to any claim de-
12 scribed in subparagraph (A), from—

13 “(i) any judgment, order, consent
14 order, or decree entered in any Federal or
15 State judicial or administrative proceeding;

16 “(ii) any settlement agreement en-
17 tered into by the debtor; or

18 “(iii) any court or administrative
19 order for any damages, fine, penalty, cita-
20 tion, restitutionary payment, disgorgement
21 payment, attorney fee, cost, or other pay-
22 ment owed by the debtor.”.

1 **SEC. 105. INCREASED PROTECTION OF EMPLOYEES WAGES**
2 **UNDER CHAPTER 11 PROCEEDINGS.**

3 Section 507(a) of title 11, United States Code, is
4 amended—

5 (1) in paragraph (3) by striking “90” and in-
6 serting “180”, and

7 (2) in paragraphs (3) and (4) by striking
8 “\$4,000” each place it appears and inserting
9 “\$10,000”.

10 **SEC. 106. STATUTE OF LIMITATIONS FOR SECURITIES**
11 **FRAUD.**

12 (a) IN GENERAL.—Section 1658 of title 28, United
13 States Code, is amended—

14 (1) by inserting “(a)” before “Except”; and

15 (2) by adding at the end the following:

16 “(b) Notwithstanding subsection (a), a private right
17 of action that involves a claim of fraud, deceit, manipula-
18 tion, or deliberate or reckless disregard of a regulatory re-
19 quirement concerning the securities laws, as defined in
20 section 3(a)(47) of the Securities Exchange Act of 1934
21 (15 U.S.C. 78c(a)(47)), may be brought not later than
22 the earlier of—

23 “(1) 5 years after the date on which the alleged
24 violation occurred; or

25 “(2) 3 years after the date on which the alleged
26 violation was discovered.”.

1 (b) EFFECTIVE DATE.—The limitations period pro-
2 vided by section 1658(b) of title 28, United States Code,
3 as added by this section, shall apply to all proceedings ad-
4 dressed by this section that are commenced on or after
5 the date of enactment of this Act.

6 **SEC. 107. PROTECTION FOR EMPLOYEES OF PUBLICLY**
7 **TRADED COMPANIES WHO PROVIDE EVI-**
8 **DENCE OF FRAUD.**

9 (a) IN GENERAL.—Chapter 73 of title 18, United
10 States Code, is amended by inserting after section 1514
11 the following:

12 **“§ 1514A. Civil action to protect against retaliation in**
13 **fraud cases**

14 “(a) WHISTLEBLOWER PROTECTION FOR EMPLOY-
15 EES OF PUBLICLY TRADED COMPANIES.—No company
16 with securities registered under section 6 of the Securities
17 Act of 1933 (15 U.S.C. 77f) or section 12 or 15(d) of
18 the Securities Exchange Act of 1934 (15 U.S.C. 78l,
19 78o(d)), or any officer, employee, contractor, subcon-
20 tractor, or agent of such company, may discharge, demote,
21 suspend, threaten, harass, or in any other manner dis-
22 criminate against an employee in the terms and conditions
23 of employment because of any lawful act done by the
24 employee—

1 “(1) to provide information, cause information
2 to be provided, or otherwise assist in an investiga-
3 tion regarding any conduct which the employee rea-
4 sonably believes constitutes a violation of section
5 1341, 1343, 1344, or 1348, any rule or regulation
6 of the Securities and Exchange Commission, or any
7 provision of Federal law relating to fraud against
8 shareholders, when the information or assistance is
9 provided to or the investigation is conducted by—

10 “(A) a Federal regulatory or law enforce-
11 ment agency;

12 “(B) any Member of Congress or any com-
13 mittee of Congress; or

14 “(C) a person with supervisory authority
15 over the employee (or such other person work-
16 ing for the employer who has the authority to
17 investigate, discover, or terminate misconduct);
18 or

19 “(2) to file, cause to be filed, testify, participate
20 in, or otherwise assist in a proceeding filed or about
21 to be filed (with any knowledge of the employer) re-
22 lating to an alleged violation of section 1341, 1343,
23 1344, or 1348, any rule or regulation of the Securi-
24 ties and Exchange Commission, or any provision of
25 Federal law relating to fraud against shareholders.

1 “(b) ELECTION OF ACTION.—

2 “(1) IN GENERAL.—A person who alleges dis-
3 charge or other discrimination by any person in vio-
4 lation of subsection (a) may seek relief under sub-
5 section (c), by—

6 “(A) filing a complaint with the Secretary
7 of Labor; or

8 “(B) bringing an action at law or equity in
9 the appropriate district court of the United
10 States.

11 “(2) PROCEDURE.—

12 “(A) IN GENERAL.—An action under para-
13 graph (1)(A) shall be governed under the rules
14 and procedures set forth in section 42121(b) of
15 title 49, United States Code.

16 “(B) EXCEPTION.—Notification made
17 under section 42121(b)(1) of title 49, United
18 States Code, shall be made to the person named
19 in the complaint and to the employer.

20 “(C) BURDENS OF PROOF.—An action
21 brought under paragraph (1)(B) shall be gov-
22 erned by the legal burdens of proof set forth in
23 section 42121(b) of title 49, United States
24 Code.

1 “(D) STATUTE OF LIMITATIONS.—An ac-
2 tion under paragraph (1) shall be commenced
3 not later than 180 days after the date on which
4 the violation occurs.

5 “(c) REMEDIES.—

6 “(1) IN GENERAL.—An employee prevailing in
7 any action under subsection (b)(1) (A) or (B) shall
8 be entitled to all relief necessary to make the em-
9 ployee whole.

10 “(2) COMPENSATORY DAMAGES.—Relief for any
11 action under paragraph (1) shall include—

12 “(A) reinstatement with the same seniority
13 status that the employee would have had, but
14 for the discrimination;

15 “(B) 2 times the amount of back pay, with
16 interest; and

17 “(C) compensation for any special damages
18 sustained as a result of the discrimination, in-
19 cluding litigation costs, expert witness fees, and
20 reasonable attorney fees.

21 “(3) PUNITIVE DAMAGES.—

22 “(A) IN GENERAL.—In a case in which the
23 finder of fact determines that the protected
24 conduct of the employee under subsection (a)
25 involved a substantial risk to the health, safety,

1 or welfare of shareholders of the employer or
2 the public, the finder of fact may award puni-
3 tive damages to the employee.

4 “(B) FACTORS.—In determining the
5 amount, if any, to be awarded under this para-
6 graph, the finder of fact shall take into
7 account—

8 “(i) the significance of the informa-
9 tion or assistance provided by the employee
10 under subsection (a) and the role of the
11 employee in advancing any investigation,
12 proceeding, congressional inquiry or action,
13 or internal remedial process, or in pro-
14 tecting the health, safety, or welfare of
15 shareholders of the employer or of the pub-
16 lic;

17 “(ii) the nature and extent of both the
18 actual and potential discrimination to
19 which the employee was subjected as a re-
20 sult of the protected conduct of the em-
21 ployee under subsection (a); and

22 “(iii) the nature and extent of the risk
23 to the health, safety, or welfare of share-
24 holders or the public under subparagraph
25 (A).

1 “(d) RIGHTS RETAINED BY EMPLOYEE.—

2 “(1) OTHER REMEDIES UNAFFECTED.—Noth-
3 ing in this section shall be deemed to diminish the
4 rights, privilege, or remedies of any employee under
5 any Federal or State law, or under any collective
6 bargaining agreement.

7 “(2) VOLUNTARY ADJUDICATION.—No em-
8 ployee may be compelled to adjudicate his or her
9 rights under this section pursuant to an arbitration
10 agreement.”.

11 (b) CLERICAL AMENDMENT.—The table of sections
12 at the beginning of chapter 73 of title 18, United States
13 Code, is amended by inserting after the item relating to
14 section 1514 the following new item:

“1514A. Civil action to protect against retaliation in fraud cases.”.

15 **SEC. 108. ESTABLISHMENT OF A RETIREMENT SECURITY**
16 **FRAUD BUREAU.**

17 (a) IN GENERAL.—Part II of title 28, United States
18 Code, is amended by adding at the end the following:

19 **“CHAPTER 40A—RETIREMENT SECURITY**
20 **FRAUD BUREAU**

21 **“§ 600. Retirement Security Fraud Bureau**

22 “(a) IN GENERAL.—The Attorney General shall es-
23 tablish a Retirement Security Fraud Bureau which shall
24 be a bureau in the Department of Justice.

25 “(b) DIRECTOR.—

1 “(1) APPOINTMENT.—The head of the Retirement Security Fraud Bureau shall be the Director
2 who shall be appointed by the Attorney General.

3 “(2) DUTIES AND POWERS.—The duties and
4 powers of the Director are as follows:

5 “(A) Advise and make recommendations
6 on matters relating to pension and securities
7 fraud, in general, to the Assistant Attorney
8 General of the Criminal Division.

9 “(B) Maintain a government-wide data access service, with access, in accordance with applicable legal requirements, to the following:

10 “(i) Information collected by the Department of Justice, the Department of Labor, the Department of the Treasury, and the Securities and Exchange Commission on pension and securities fraud matters.

11 “(ii) Other privately and publicly available information on pension and securities fraud-related activities.

12 “(C) Analyze and disseminate the available data in accordance with applicable legal requirements, policies, and guidelines established by the Attorney General to—

1 “(i) identify possible criminal activity
2 to appropriate Federal, State, local, and
3 foreign law enforcement agencies;

4 “(ii) support ongoing criminal pension
5 and securities fraud investigations;

6 “(iii) determine emerging trends and
7 methods in pension and securities fraud
8 matters; and

9 “(iv) support government initiatives
10 against pension and securities fraud-re-
11 lated activities.

12 “(D) Furnish research, analytical, and in-
13 formational services to financial institutions, to
14 appropriate Federal regulatory agencies with
15 regard to financial institutions, and to appro-
16 priate Federal, State, local, and foreign law en-
17 forcement authorities, in accordance with poli-
18 cies and guidelines established by the Depart-
19 ment of Justice, in the interest of detection,
20 prevention, and prosecution of pension and se-
21 curities fraud-related crimes.

22 “(E) Establish and maintain a special unit
23 dedicated to assisting Federal, State, local, and
24 foreign law enforcement and regulatory authori-
25 ties in combating pension and securities fraud.

1 “(F) Such other duties and powers as the
2 Attorney General may delegate or prescribe.

3 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated for the Retirement Se-
5 curity Fraud Bureau such sums as may be necessary for
6 fiscal years 2003, 2004, 2005, and 2006.”.

7 (b) CLERICAL AMENDMENT.—The table of chapters
8 at the beginning of part II of title 28, United States Code,
9 is amended by adding at the end the following new item:

“40A. Retirement Security Fraud Bureau 600”.

10 **SEC. 109. CRIMINAL PENALTIES FOR MAIL AND WIRE**
11 **FRAUD.**

12 (a) MAIL FRAUD.—Section 1341 of title 18, United
13 States Code, is amended by striking “five years” and in-
14 serting “20 years”.

15 (b) WIRE FRAUD.—Section 1343 of title 18, United
16 States Code, is amended by striking “five years” and in-
17 serting “20 years”.

18 **SEC. 110. AMENDMENT TO SENTENCING GUIDELINES RE-**
19 **LATING TO CERTAIN WHITE-COLLAR OF-**
20 **FENSES.**

21 (a) DIRECTIVE TO THE UNITED STATES SEN-
22 TENCING COMMISSION.—Pursuant to its authority under
23 section 994(p) of title 18, United States Code, and in ac-
24 cordance with this section, the United States Sentencing
25 Commission shall review and, as appropriate, amend the

1 Federal Sentencing Guidelines and related policy state-
2 ments to implement the provisions of this title.

3 (b) REQUIREMENTS.—In carrying out this section,
4 the Sentencing Commission shall—

5 (1) ensure that the sentencing guidelines and
6 policy statements reflect the serious nature of the of-
7 fenses and the penalties set forth in this title, the
8 growing incidence of serious fraud offenses which
9 are identified above, and the need to modify the sen-
10 tencing guidelines and policy statements to deter,
11 prevent, and punish such offenses;

12 (2) consider the extent to which the guidelines
13 and policy statements adequately address—

14 (A) whether the guideline offense levels
15 and enhancements for violations of the sections
16 amended by this title are sufficient to deter and
17 punish such offenses, and specifically, are ade-
18 quate in view of the statutory increases in pen-
19 alties contained in this title; and

20 (B) whether a specific offense char-
21 acteristic should be added in United States
22 Sentencing Guideline section 2B1.1 in order to
23 provide for stronger penalties for fraud when
24 the crime is committed by a corporate officer or
25 director;

1 (3) assure reasonable consistency with other
2 relevant directives and sentencing guidelines;

3 (4) account for any additional aggravating or
4 mitigating circumstances that might justify excep-
5 tions to the generally applicable sentencing ranges;

6 (5) make any necessary conforming changes to
7 the sentencing guidelines; and

8 (6) assure that the guidelines adequately meet
9 the purposes of sentencing as set forth in section
10 3553(a)(2) of title 18, United States Code.

11 **SEC. 111. TEMPORARY FREEZE AUTHORITY FOR THE SECU-**
12 **RITIES AND EXCHANGE COMMISSION.**

13 (a) IN GENERAL.—The Securities Exchange Act of
14 1934 is amended by inserting after section 21C(c)(2) (15
15 U.S.C. 78u–3(c)(2)) the following:

16 “(3) TEMPORARY FREEZE.—(A) Whenever,
17 during the course of a lawful investigation involving
18 possible violations of the Federal securities laws by
19 an issuer of publicly traded securities or any of its
20 directors, officers, partners, controlling persons,
21 agents, or employees, it shall appear to the Commis-
22 sion that it is likely that the issuer will make ex-
23 traordinary payments (whether compensation or oth-
24 erwise) to any of the foregoing persons, the Commis-
25 sion may petition a Federal district court for a tem-

1 porary order requiring the issuer to escrow, subject
2 to court supervision, those payments in an interest-
3 bearing account for 45 days. Such an order shall be
4 entered, if the court finds that the issuer is likely to
5 make such extraordinary payments, only after notice
6 and opportunity for a hearing, unless the court de-
7 termines that notice and hearing prior to entry of
8 the order would be impracticable or contrary to the
9 public interest. A temporary order shall become ef-
10 fective immediately and shall be served upon the
11 parties subject to it and, unless set aside, limited or
12 suspended by court of competent jurisdiction, shall
13 remain effective and enforceable for 45 days. The
14 period of the order may be extended by the court
15 upon good cause shown for not longer than 45 days,
16 provided that the combined period of the order not
17 exceed 90 days.

18 “(B) If the individual affected by such order is
19 charged with violations of the Federal securities laws
20 by the expiration of the 45 days (or the expiration
21 of any extended period), the escrow would continue,
22 subject to court approval, until the conclusion of any
23 legal proceedings. The issuer and the affected direc-
24 tor, officer, partner, controlling person, agent or em-
25 ployee would have the right to petition the court for

1 review of the order. If the individual affected by
2 such order is not charged, the escrow will terminate
3 at the expiration of the 45 days (or the expiration
4 of any extended period), and the payments (with ac-
5 crued interest) returned to the issuer.”.

6 (b) TECHNICAL AMENDMENT.—Section 21C(c)(2) of
7 the Securities Exchange Act of 1934 (15 U.S.C. 78u–
8 3(c)(2)) is amended by striking “This” and inserting
9 “Paragraph (1) of this”.

10 **SEC. 112. INCREASED CRIMINAL PENALTIES UNDER SECU-**
11 **RITIES EXCHANGE ACT OF 1934.**

12 Section 32(a) of the Securities Exchange Act of 1934
13 (15 U.S.C. 78ff(a)) is amended—

14 (1) by striking “\$1,000,000, or imprisoned not
15 more than 10 years” and inserting “\$5,000,000, or
16 imprisoned not more than 20 years”; and

17 (2) by striking “\$2,500,000” and inserting
18 “\$25,000,000”.

19 **SEC. 113. CORPORATE RESPONSIBILITY FOR FINANCIAL**
20 **REPORTS.**

21 (a) IN GENERAL.—Chapter 63 of title 18, United
22 States Code, is amended by adding at the end the fol-
23 lowing:

1 **“§ 1348. Failure of corporate officers to certify finan-**
2 **cial reports**

3 “(a) CERTIFICATION OF PERIODIC FINANCIAL RE-
4 PORTS.—Each periodic report containing financial state-
5 ments filed by an issuer with the Securities Exchange
6 Commission pursuant to section 13(a) or 15(d) of the Se-
7 curities Exchange Act of 1934 (15 U.S.C. 78m(a) or
8 78o(d)) shall be accompanied by a written statement by
9 the chairman of the board, chief executive officer, and
10 chief financial officer (or equivalent thereof) of the issuer.

11 “(b) CONTENT.—The statement required under sub-
12 section (a) shall certify the appropriateness of the finan-
13 cial statements and disclosures contained in the periodic
14 report or financial report, and that those financial state-
15 ments and disclosures fairly present, in all material re-
16 spects, the operations and financial condition of the issuer.

17 “(c) CRIMINAL PENALTIES.—Notwithstanding any
18 other provision of law—

19 “(1) any person who recklessly and knowingly
20 violates any provision of this section shall upon con-
21 viction be fined not more than \$1,000,000, or im-
22 prisoned not more than 10 years, or both; or

23 “(2) any person who willfully violates any provi-
24 sion of this section shall upon conviction be fined not
25 more than \$5,000,000, or imprisoned not more than
26 20 years, or both.”.

1 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 2 The section analysis for chapter 63 of title 18, United
 3 States Code, is amended by adding at the end the fol-
 4 lowing:

“1348. Failure of corporate officers to certify financial reports.”.

5 **TITLE II—STOPPING OFFSHORE** 6 **TAX HAVENS**

7 **SEC. 201. PREVENTION OF CORPORATE EXPATRIATION TO** 8 **AVOID UNITED STATES INCOME TAX.**

9 (a) IN GENERAL.—Paragraph (4) of section 7701(a)
 10 of the Internal Revenue Code of 1986 (defining domestic)
 11 is amended to read as follows:

12 “(4) DOMESTIC.—

13 “(A) IN GENERAL.—Except as provided in
 14 subparagraph (B), the term ‘domestic’ when ap-
 15 plied to a corporation or partnership means cre-
 16 ated or organized in the United States or under
 17 the law of the United States or of any State
 18 unless, in the case of a partnership, the Sec-
 19 retary provides otherwise by regulations.

20 “(B) CERTAIN CORPORATIONS TREATED
 21 AS DOMESTIC.—

22 “(i) IN GENERAL.—The acquiring cor-
 23 poration in a corporate expatriation trans-
 24 action shall be treated as a domestic cor-
 25 poration.

1 “(ii) CORPORATE EXPATRIATION
2 TRANSACTION.—For purposes of this sub-
3 paragraph, the term ‘corporate expatria-
4 tion transaction’ means any transaction
5 if—

6 “(I) a nominally foreign corpora-
7 tion (referred to in this subparagraph
8 as the ‘acquiring corporation’) ac-
9 quires, as a result of such transaction,
10 directly or indirectly substantially all
11 of the properties held directly or indi-
12 rectly by a domestic corporation, and

13 “(II) immediately after the trans-
14 action, more than 80 percent of the
15 stock (by vote or value) of the acquir-
16 ing corporation is held by former
17 shareholders of the domestic corpora-
18 tion by reason of holding stock in the
19 domestic corporation.

20 “(iii) LOWER STOCK OWNERSHIP RE-
21 QUIREMENT IN CERTAIN CASES.—Sub-
22 clause (II) of clause (ii) shall be applied by
23 substituting ‘50 percent’ for ‘80 percent’
24 with respect to any nominally foreign cor-
25 poration if—

1 “(I) such corporation does not
2 have substantial business activities
3 (when compared to the total business
4 activities of the expanded affiliated
5 group) in the foreign country in which
6 or under the law of which the corpora-
7 tion is created or organized, and

8 “(II) the stock of the corporation
9 is publicly traded and the principal
10 market for the public trading of such
11 stock is in the United States.

12 “(iv) PARTNERSHIP TRANSACTIONS.—
13 The term ‘corporate expatriation trans-
14 action’ includes any transaction if—

15 “(I) a nominally foreign corpora-
16 tion (referred to in this subparagraph
17 as the ‘acquiring corporation’) ac-
18 quires, as a result of such transaction,
19 directly or indirectly properties consti-
20 tuting a trade or business of a domes-
21 tic partnership,

22 “(II) immediately after the trans-
23 action, more than 80 percent of the
24 stock (by vote or value) of the acquir-
25 ing corporation is held by former

1 partners of the domestic partnership
2 or related foreign partnerships (deter-
3 mined without regard to stock of the
4 acquiring corporation which is sold in
5 a public offering related to the trans-
6 action), and

7 “(III) the acquiring corporation
8 meets the requirements of subclauses
9 (I) and (II) of clause (iii).

10 “(v) SPECIAL RULES.—For purposes
11 of this subparagraph—

12 “(I) a series of related trans-
13 actions shall be treated as 1 trans-
14 action, and

15 “(II) stock held by members of
16 the expanded affiliated group which
17 includes the acquiring corporation
18 shall not be taken into account in de-
19 termining ownership.

20 “(vi) OTHER DEFINITIONS.—For pur-
21 poses of this subparagraph—

22 “(I) NOMINALLY FOREIGN COR-
23 PORATION.—The term ‘nominally for-
24 eign corporation’ means any corpora-
25 tion which would (but for this sub-

1 paragraph) be treated as a foreign
2 corporation.

3 “(II) EXPANDED AFFILIATED
4 GROUP.—The term ‘expanded affili-
5 ated group’ means an affiliated group
6 (as defined in section 1504(a) without
7 regard to section 1504(b)).

8 “(III) RELATED FOREIGN PART-
9 NERSHIP.—A foreign partnership is
10 related to a domestic partnership if
11 they are under common control (with-
12 in the meaning of section 482), or
13 they shared the same trademark or
14 tradename.”

15 (b) EFFECTIVE DATES.—

16 (1) IN GENERAL.—The amendment made by
17 this section shall apply to corporate expatriation
18 transactions completed after September 11, 2001.

19 (2) SPECIAL RULE.—The amendment made by
20 this section shall also apply to corporate expatriation
21 transactions completed on or before September 11,
22 2001, but only with respect to taxable years of the
23 acquiring corporation beginning after December 31,
24 2003.

1 **SEC. 202. INCLUSION IN INCOME OF CERTAIN DEFERRED**
 2 **AMOUNTS OF INSIDERS OF CORPORATIONS**
 3 **WHICH EXPATRIATE TO AVOID UNITED**
 4 **STATES INCOME TAX.**

5 (a) IN GENERAL.—Part II of subchapter B of chap-
 6 ter 1 of the Internal Revenue Code of 1986 (relating to
 7 items specifically included in gross income) is amended by
 8 adding at the end the following new section:

9 **“SEC. 91. UNREALIZED GAIN ON STOCK OPTIONS OF INSID-**
 10 **ERS OF CORPORATIONS WHICH EXPATRIATE**
 11 **TO AVOID UNITED STATES INCOME TAX.**

12 “(a) IN GENERAL.—In the case of a corporate insider
 13 of any expatriate corporation, the gross income of such
 14 insider (for the taxable year during which such corpora-
 15 tion becomes an expatriate corporation) shall include as
 16 ordinary income the net unrealized built-in gain on options
 17 held by such insider to acquire stock in such corporation
 18 or in any member of the expanded affiliated group which
 19 includes such corporation. Proper adjustments shall be
 20 made in the amount of any gain or loss subsequently real-
 21 ized with respect to such options for any amount included
 22 in gross income under the preceding sentence.

23 “(b) DEFINITIONS.—For purposes of this section—

24 “(1) CORPORATE INSIDER.—The term ‘cor-
 25 porate insider’ means, with respect to a corporation,
 26 any individual who is subject to the requirements of

1 section 16(a) of the Securities Exchange Act of
2 1934 with respect to such corporation.

3 “(2) EXPATRIATE CORPORATION.—The term
4 ‘expatriate corporation’ means the acquiring cor-
5 poration which is treated as a domestic corporation
6 under section 7701(a)(4)(B).

7 “(3) NET REALIZED BUILT-IN GAIN.—The term
8 ‘net unrealized built-in gain’ means, with respect to
9 options to acquire stock in any corporation, the
10 amount which would be required to be included in
11 gross income were such options exercised.

12 “(4) EXPANDED AFFILIATED GROUP.—The
13 term ‘expanded affiliated group’ means an affiliated
14 group (as defined in section 1504(a) without regard
15 to section 1504(b)).”

16 (b) CLERICAL AMENDMENT.—The table of sections
17 for such part II is amended by adding at the end the fol-
18 lowing new item:

“Sec. 91. Unrealized gain on stock options of insiders of corpora-
tions which expatriate to avoid united states income
tax..”

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply with respect to corporate expatria-
21 tion transactions completed after September 11, 2001,
22 and to taxable years ending after such date.

1 **TITLE III—MAKING EXECUTIVES**
2 **ACCOUNTABLE**

3 **SEC. 301. PERFORMANCE-BASED COMPENSATION EXCEP-**
4 **TION TO \$1,000,000 LIMITATION ON DEDUCT-**
5 **IBLE COMPENSATION NOT TO APPLY IN CER-**
6 **TAIN CASES.**

7 (a) IN GENERAL.—Paragraph (4) of section 162(m)
8 of the Internal Revenue Code of 1986 is amended by add-
9 ing at the end the following new subparagraph:

10 “(G) CERTAIN FACTORS NOT PERMITTED
11 TO BE TAKEN INTO ACCOUNT IN DETERMINING
12 WHETHER PERFORMANCE GOALS ARE MET.—
13 Subparagraph (C) shall not apply if, in deter-
14 mining whether the performance goals are met,
15 any of the following are taken into account:

16 “(i) Cost savings as a result of
17 changes to any qualified employer plan (as
18 defined in section 4972(d)).

19 “(ii) Excess assets of such a plan or
20 earnings thereon.

21 “(iii) Any excess of the amount as-
22 sumed to be the return on the assets of
23 such a plan over the actual return on such
24 assets.”

1 (b) EFFECTIVE DATE.—The amendment made by
 2 this section shall apply to taxable years beginning after
 3 the date of the enactment of this Act.

4 **SEC. 302. INCLUSION IN GROSS INCOME OF FUNDED DE-**
 5 **FERRED COMPENSATION OF CORPORATE IN-**
 6 **SIDERS IF CORPORATION FUNDS DEFINED**
 7 **CONTRIBUTION PLAN WITH EMPLOYER**
 8 **STOCK.**

9 (a) IN GENERAL.—Subpart A of part I of subchapter
 10 D of chapter 1 of the Internal Revenue Code of 1986 is
 11 amended by adding at the end the following new section:

12 **“SEC. 409A. DENIAL OF DEFERRAL FOR FUNDED DEFERRED**
 13 **COMPENSATION OF CORPORATE INSIDERS IF**
 14 **CORPORATION FUNDS DEFINED CONTRIBU-**
 15 **TION PLAN WITH EMPLOYER STOCK.**

16 “(a) IN GENERAL.—If an employer maintains a de-
 17 fined contribution plan to which employer contributions
 18 are made in the form of employer stock and such employer
 19 maintains a funded deferred compensation plan—

20 “(1) compensation of any corporate insider
 21 which is deferred under such funded deferred com-
 22 pensation plan shall be included in the gross income
 23 of the insider or beneficiary for the 1st taxable year
 24 in which there is no substantial risk of forfeiture of
 25 the rights to such compensation, and

1 “(2) the tax treatment of any amount made
2 available under the plan to a corporate insider or
3 beneficiary shall be determined under section 72 (re-
4 lating to annuities, etc.).

5 “(b) FUNDED DEFERRED COMPENSATION PLAN.—
6 For purposes of this section—

7 “(1) IN GENERAL.—The term ‘funded deferred
8 compensation plan’ means any plan providing for the
9 deferral of compensation unless—

10 “(A) the employee’s rights to the com-
11 pensation deferred under the plan are no great-
12 er than the rights of a general creditor of the
13 employer, and

14 “(B) all amounts set aside (directly or in-
15 directly) for purposes of paying the deferred
16 compensation, and all income attributable to
17 such amounts, remain (until made available to
18 the participant or other beneficiary) solely the
19 property of the employer (without being re-
20 stricted to the provision of benefits under the
21 plan), and

22 “(C) the amounts referred to in subpara-
23 graph (B) are available to satisfy the claims of
24 the employer’s general creditors at all times
25 (not merely after bankruptcy or insolvency).

1 Such term shall not include a qualified employer
2 plan.

3 “(2) SPECIAL RULES.—

4 “(A) EMPLOYEE’S RIGHTS.—A plan shall
5 be treated as failing to meet the requirements
6 of paragraph (1)(A) unless—

7 “(i) the compensation deferred under
8 the plan is paid only upon separation from
9 service, death, or at a specified time (or
10 pursuant to a fixed schedule), and

11 “(ii) the plan does not permit the ac-
12 celeration of the time such deferred com-
13 pensation is paid by reason of any event.

14 If the employer and employee agree to a modi-
15 fication of the plan that accelerates the time for
16 payment of any deferred compensation, then all
17 compensation previously deferred under the
18 plan shall be includible in gross income for the
19 taxable year during which such modification
20 takes effect and the taxpayer shall pay interest
21 at the underpayment rate on the underpay-
22 ments that would have occurred had the de-
23 ferred compensation been includible in gross in-
24 come when deferred.

1 “(B) CREDITOR’S RIGHTS.—A plan shall
2 be treated as failing to meet the requirements
3 of paragraph (1)(B) with respect to amounts
4 set aside in a trust unless—

5 “(i) the employee has no beneficial in-
6 terest in the trust,

7 “(ii) assets in the trust are available
8 to satisfy claims of general creditors at all
9 times (not merely after bankruptcy or in-
10 solvency), and

11 “(iii) there is no factor (such as the
12 location of the trust outside the United
13 States) that would make it more difficult
14 for general creditors to reach the assets in
15 the trust than it would be if the trust as-
16 sets were held directly by the employer in
17 the United States.

18 “(c) CORPORATE INSIDER.—For purposes of this sec-
19 tion, the term ‘corporate insider’ means, with respect to
20 a corporation, any individual who is subject to the require-
21 ments of section 16(a) of the Securities Exchange Act of
22 1934 with respect to such corporation.

23 “(d) OTHER DEFINITIONS.—For purposes of this
24 section—

1 “(1) PLAN INCLUDES ARRANGEMENTS, ETC.—
 2 The term ‘plan’ includes any agreement or arrange-
 3 ment.

4 “(2) SUBSTANTIAL RISK OF FORFEITURE.—The
 5 rights of a person to compensation are subject to a
 6 substantial risk of forfeiture if such person’s rights
 7 to such compensation are conditioned upon the fu-
 8 ture performance of substantial services by any indi-
 9 vidual.”

10 (b) CLERICAL AMENDMENT.—The table of sections
 11 for such subpart A is amended by adding at the end the
 12 following new item:

 “Sec. 409A. Denial of deferral for funded deferred compensation
 of corporate insiders if corporation funds defined
 contribution plan with employer stock.”

13 (b) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to amounts deferred after the date
 15 of the enactment of this Act.

16 **SEC. 303. GOLDEN PARACHUTE EXCISE TAX TO APPLY TO**
 17 **DEFERRED COMPENSATION PAID BY COR-**
 18 **PORATION AFTER MAJOR DECLINE IN STOCK**
 19 **VALUE OR CORPORATION DECLARES BANK-**
 20 **RUPTCY.**

21 (a) IN GENERAL.—Section 4999 of the Internal Rev-
 22 enue Code of 1986 (relating to golden parachute pay-
 23 ments) is amended by redesignating subsection (c) as sub-

1 section (d) and by inserting after subsection (b) the fol-
 2 lowing new subsection:

3 “(c) TAX TO APPLY TO DEFERRED COMPENSATION
 4 PAID AFTER MAJOR STOCK VALUE DECLINE OR BANK-
 5 RUPTCY.—

6 “(1) IN GENERAL.—For purposes of this sec-
 7 tion, the term ‘excess parachute payment’ includes
 8 severance pay, and any other payment of deferred
 9 compensation, which is received by a corporate in-
 10 sider after the date that the insider ceases to be em-
 11 ployed by the corporation if—

12 “(A) there is at least a 75-percent decline
 13 in the value of the stock in such corporation
 14 during the 1-year period ending on such date,
 15 or

16 “(B) such corporation becomes a debtor in
 17 a title 11 or similar case (as defined in section
 18 368(a)(3)(A)) during the 180-day period begin-
 19 ning 90 days before such date.

20 Such term shall not include any payment from a
 21 qualified employer plan.

22 “(2) CORPORATE INSIDER.—For purposes of
 23 paragraph (1), the term ‘corporate insider’ means,
 24 with respect to a corporation, any individual who is
 25 subject to the requirements of section 16(a) of the

1 Securities Exchange Act of 1934 with respect to
2 such corporation.”

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply with respect to cessations of em-
5 ployment after the date of the enactment of this Act.

6 **SEC. 304. GOVERNANCE PRACTICES TO PROHIBIT INSIDER**
7 **LOANS.**

8 (a) RULEMAKING REQUIRED.—

9 (1) PROHIBITED LOANS.—Every national secu-
10 rities exchange and national securities association
11 shall adopt rules, effective no later than 6 months
12 after the date of enactment of this Act, to require
13 that the qualitative listing standards concerning cor-
14 porate governance of the exchange or association
15 prohibit loans or other extensions of credit that in
16 the aggregate exceed \$50,000 to any corporate in-
17 sider.

18 (2) DEFINITION OF CORPORATE INSIDER.—For
19 purposes of paragraph (1), the term “corporate in-
20 sider” with respect to any issuer means any person
21 who is a beneficial owner, officer, or director who is
22 required to file a statement under section 16 of the
23 Securities Exchange Act of 1934 (15 U.S.C. 78p)
24 with respect to ownership of the equity securities of
25 such issuer.

1 (3) OTHER DEFINITIONS.—For purposes of
2 paragraph (1), the terms “national securities ex-
3 change” and “national securities association” have
4 the same meanings provided in section 3 of the Se-
5 curities Exchange Act of 1934 (15 U.S.C. 78c).

6 (b) PROCEDURE.—The rules required by subsection
7 (a) of this section shall be adopted by any national securi-
8 ties exchange or national securities association pursuant
9 to section 19(b) of the Securities Exchange Act of 1934
10 (15 U.S.C. 78s(b)). If the rules required by this section
11 have not been adopted by any national securities exchange
12 and national securities association and made effective by
13 9 months after the date of enactment of this Act, the Se-
14 curities and Exchange Commission shall initiate pro-
15 ceedings to add the rules required by this section to the
16 rules of such national securities exchange and national se-
17 curities association.

18 (c) NO ADVERSE INFERENCE.—Nothing in this sec-
19 tion shall be construed to alter, impair, limit, or abrogate
20 the Security and Exchange Commission’s power under
21 section 19(c) of the Securities Exchange Act of 1934 to
22 abrogate, add to, and delete from the rules of a self-regu-
23 latory organization (other than a registered clearing agen-
24 cy) as the Securities and Exchange Commission deems
25 necessary or appropriate.

1 **SEC. 305. REMOVAL OF UNFIT CORPORATE OFFICERS.**

2 (a) REMOVAL IN JUDICIAL PROCEEDINGS.—

3 (1) SECURITIES ACT OF 1933.—Section 20(e) of
4 the Securities Act of 1933 (15 U.S.C. 77t(e)) is
5 amended by striking “substantial unfitness” and in-
6 serting “unfitness”.

7 (2) SECURITIES EXCHANGE ACT OF 1934.—Sec-
8 tion 21(d)(2) of the Securities Exchange Act of
9 1934 (15 U.S.C. 78u(d)(2)) is amended by striking
10 “substantial unfitness” and inserting “unfitness”.

11 (b) REMOVAL IN ADMINISTRATIVE PROCEEDINGS.—

12 (1) SECURITIES ACT OF 1933.—Section 8A of
13 the Securities Act of 1933 (15 U.S.C. 77h–1) is
14 amended by adding at the end the following new
15 subsection:

16 “(f) AUTHORITY TO PROHIBIT PERSONS FROM
17 SERVING AS OFFICERS OR DIRECTORS.—In any cease-
18 and-desist proceeding under subsection (a), the Commis-
19 sion may issue an order to prohibit, conditionally or un-
20 conditionally, and permanently or for such period of time
21 as it shall determine, any person who has violated section
22 17(a)(1) of this title from acting as an officer or director
23 of any issuer that has a class of securities registered pur-
24 suant to section 12 of the Securities Exchange Act of
25 1934 or that is required to file reports pursuant to section
26 15(d) of that Act if the person’s conduct demonstrates

1 unfitness to serve as an officer or director of any such
2 issuer.”.

3 (2) SECURITIES EXCHANGE ACT OF 1934.—Sec-
4 tion 21C of the Securities Exchange Act of 1934 (15
5 U.S.C. 78u–3) is amended by adding at the end the
6 following new subsection:

7 “(f) AUTHORITY TO PROHIBIT PERSONS FROM
8 SERVING AS OFFICERS OR DIRECTORS.—In any cease-
9 and-desist proceeding under subsection (a), the Commis-
10 sion may issue an order to prohibit, conditionally or un-
11 conditionally, and permanently or for such period of time
12 as it shall determine, any person who has violated section
13 10(b) of this title or the rules or regulations thereunder
14 from acting as an officer or director of any issuer that
15 has a class of securities registered pursuant to section 12
16 of this title or that is required to file reports pursuant
17 to section 15(d) of this title if the person’s conduct dem-
18 onstrates unfitness to serve as an officer or director of
19 any such issuer.”.

20 **SEC. 306. DISGORGEMENT REQUIRED.**

21 (a) ADMINISTRATIVE ACTIONS.—Within 30 days
22 after the date of enactment of this Act, the Securities and
23 Exchange Commission shall prescribe regulations to re-
24 quire disgorgement, in a proceeding pursuant to its au-
25 thority under section 21A, 21B, or 21C of the Securities

1 Exchange Act of 1934 (15 U.S.C. 78u-1, 78u-2, 78u-
2 3), of salaries, commissions, fees, bonuses, options, profits
3 from securities transactions, and losses avoided through
4 securities transactions obtained by an officer or director
5 of an issuer during or for a fiscal year or other reporting
6 period if such officer or director engaged in misconduct
7 resulting in, or made or caused to be made in, the filing
8 of a financial statement for such fiscal year or reporting
9 period which—

10 (1) was at the time, and in the light of the cir-
11 cumstances under which it was made, false or mis-
12 leading with respect to any material fact; or

13 (2) omitted to state a material fact necessary in
14 order to make the statements made, in the light of
15 the circumstances in which they were made, not mis-
16 leading,

17 (b) JUDICIAL PROCEEDINGS.—Section 21(d) of the
18 Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is
19 amended by adding at the end the following new para-
20 graph:

21 “(5) ADDITIONAL DISGORGEMENT AUTHOR-
22 ITY.—In any action or proceeding brought or insti-
23 tuted by the Commission under the securities laws
24 against any person—

1 “(A) for engaging in misconduct resulting
2 in, or making or causing to be made in, the fil-
3 ing of a financial statement which—

4 “(i) was at the time, and in the light
5 of the circumstances under which it was
6 made, false or misleading with respect to
7 any material fact; or

8 “(ii) omitted to state a material fact
9 necessary in order to make the statements
10 made, in the light of the circumstances in
11 which they were made, not misleading; or

12 “(B) for engaging in, causing, or aiding
13 and abetting any other violation of the securi-
14 ties laws or the rules and regulations there-
15 under,

16 such person, in addition to being subject to any
17 other appropriate order, may be required to disgorge
18 any or all benefits received from any source in con-
19 nection with the conduct constituting, causing, or
20 aiding and abetting the violation, including (but not
21 limited to) salary, commissions, fees, bonuses, op-
22 tions, profits from securities transactions, and losses
23 avoided through securities transactions.”.

1 **SEC. 307. CEO AND CFO ACCOUNTABILITY FOR DISCLO-**
2 **SURE.**

3 (a) REGULATIONS REQUIRED.—The Securities and
4 Exchange Commission shall by rule require, for each com-
5 pany filing periodic reports under section 13 or 15(d) of
6 the Securities Exchange Act of 1934 (15 U.S.C. 78m,
7 78o(d)), that the principal executive officer or officers and
8 the principal financial officer or officers, or persons per-
9 forming similar functions, certify in each annual or quar-
10 terly report filed or submitted under either such section
11 of such Act that—

12 (1) the signing officer has reviewed the report;

13 (2) based on the officer's knowledge, the report
14 does not contain any untrue statement of a material
15 fact or omit to state a material fact necessary in
16 order to make the statements made, in light of the
17 circumstances under which such statements were
18 made, not misleading;

19 (3) based on such officer's knowledge, the fi-
20 nancial statements, and other financial information
21 included in the report, fairly present in all material
22 respects the financial condition and results of oper-
23 ations of the issuer as of, and for, the periods pre-
24 sented in the report;

25 (4) the signing officers—

1 (A) are responsible for establishing and
2 maintaining internal controls;

3 (B) have designed such internal controls to
4 ensure that material information relating to the
5 issuer and its consolidated subsidiaries is made
6 known to such officers by others within those
7 entities, particularly during the period in which
8 the periodic reports are being prepared;

9 (C) have evaluated the effectiveness of the
10 issuer's internal controls as of a date within 90
11 days prior to the report; and

12 (D) have presented in the report their con-
13 clusions about the effectiveness of their internal
14 controls based on their evaluation as of that
15 date;

16 (5) the signing officers have disclosed to the
17 issuer's auditors and the audit committee of the
18 board of directors (or persons fulfilling the equiva-
19 lent function)—

20 (A) all significant deficiencies in the design
21 or operation of internal controls which could ad-
22 versely affect the issuer's ability to record, proc-
23 ess, summarize, and report financial data and
24 have identified for the issuer's auditors any ma-
25 terial weaknesses in internal controls; and

1 (B) any fraud, whether or not material,
2 that involves management or other employees
3 who have a significant role in the issuer's inter-
4 nal controls; and

5 (6) the signing officers have indicated in the re-
6 port whether or not there were significant changes
7 in internal controls or in other factors that could
8 significantly affect internal controls subsequent to
9 the date of their evaluation, including any corrective
10 actions with regard to significant deficiencies and
11 material weaknesses.

12 (b) ENFORCEMENT.—A violation by any person of
13 this section, any rule or regulation of the Commission
14 issued under this section, shall be treated for all purposes
15 in the same manner as a violation of the Securities Ex-
16 change Act of 1934 (15 U.S.C. 78a et seq.) or the rules
17 and regulations issued thereunder, consistent with the pro-
18 visions of this section, and any such person shall be sub-
19 ject to the same penalties, and to the same extent, as for
20 a violation of that Act or such rules or regulations.

21 (c) DEADLINE.—The rules required by subsection (a)
22 shall be effective not later than 30 days after the date
23 of enactment of this Act.

1 **SEC. 308. INCREASED COMPENSATION LIMIT NOT TO RE-**
2 **SULT IN REDUCED BENEFITS FOR THE NON-**
3 **HIGHLY COMPENSATED.**

4 (a) IN GENERAL.—Paragraph (17) of section 401(a)
5 of the Internal Revenue Code of 1986 is amended by add-
6 ing at the end the following new subparagraph:

7 “(C) BENEFITS MAY NOT DECREASE.—
8 Subparagraphs (A) and (B) shall be applied by
9 substituting ‘\$150,000’ for ‘\$200,000’ with re-
10 spect to a plan for any year if any employee’s
11 benefit under the plan would decrease were the
12 \$200,000 amount used by the plan instead of
13 the \$150,000 amount.”

14 (b) DEDUCTION LIMITATION.—Subsection (l) of sec-
15 tion 404 of such Code is amended by adding at the end
16 the following new sentence: “The preceding sentences of
17 this subsection shall be applied by substituting ‘\$150,000’
18 for ‘\$200,000’ with respect to a plan for any year if any
19 employee’s benefit under the plan would decrease were the
20 \$200,000 amount used by the plan instead of the
21 \$150,000 amount.”

22 (c) SIMPLIFIED EMPLOYEE PENSIONS.—Subsection
23 (k) of section 408 of such Code is amended by redesign-
24 ating paragraph (9) as paragraph (10) and by inserting
25 after paragraph (8) the following new paragraph:

1 “(9) LOWER COMPENSATION LIMITATION IF
 2 BENEFITS DECREASE.—Paragraphs (3)(C) and
 3 (6)(D) shall be applied by substituting ‘\$150,000’
 4 for ‘\$200,000’ with respect to a plan for any year
 5 if any employee’s benefit under the plan would de-
 6 crease were the \$200,000 amount used by the plan
 7 instead of the \$150,000 amount.”

8 (d) CERTAIN TAX-EXEMPT ORGANIZATIONS.—Para-
 9 graph (7) of section 505(b) of such Code is amended by
 10 adding at the end the following new sentence: “The pre-
 11 ceding sentences of this subsection shall be applied by sub-
 12 stituting ‘\$150,000’ for ‘\$200,000’ with respect to a plan
 13 for any year if any employee’s benefit under the plan
 14 would decrease were the \$200,000 amount used by the
 15 plan instead of the \$150,000 amount.”

16 (e) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to years beginning after the date
 18 of the enactment of this Act.

19 **SEC. 309. MATCHING CONTRIBUTIONS NOT TAKEN INTO AC-**
 20 **COUNT FOR MINIMUM CONTRIBUTION RE-**
 21 **QUIREMENTS UNDER TOP-HEAVY PLAN**
 22 **RULES.**

23 (a) IN GENERAL.—Subparagraph (A) of section
 24 416(c)(2) of the Internal Revenue Code of 1986 is amend-
 25 ed by striking the last sentence.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to years beginning after the date
3 of the enactment of this Act.

4 **TITLE IV—ASSURING THE IN-**
5 **TEGRITY OF WALL STREET**
6 **AND RESTORING FAITH IN**
7 **THE MARKETS**

8 **Subtitle A—Improving Corporate**
9 **Governance and Providing In-**
10 **vestors with Honest Information**

11 **SEC. 401. REAL-TIME DISCLOSURE OF FINANCIAL INFOR-**
12 **MATION.**

13 (a) REAL-TIME ISSUER DISCLOSURES REQUIRED.—

14 (1) OBLIGATIONS.—Every issuer of a security
15 registered under section 12 of the Securities Ex-
16 change Act of 1934 (15 U.S.C. 78l) shall file with
17 the Commission and disclose to the public, on a
18 rapid and essentially contemporaneous basis, such
19 information concerning the financial condition or op-
20 erations of such issuer as the Commission deter-
21 mines by rule is necessary in the public interest and
22 for the protection of investors. Such rule shall—

23 (A) specify the events or circumstances
24 giving rise to the obligation to disclose or up-
25 date a disclosure;

1 (B) establish requirements regarding the
2 rapidity and timeliness of such disclosure;

3 (C) identify the means whereby the disclo-
4 sure required shall be made, which shall ensure
5 the broad, rapid, and accurate dissemination of
6 the information to the public via electronic or
7 other communications device;

8 (D) identify the content of the information
9 to be disclosed; and

10 (E) without limiting the Commission's gen-
11 eral exemptive authority, specify any exemp-
12 tions or exceptions from such requirements.

13 (2) ENFORCEMENT.—The Commission shall
14 have exclusive authority to enforce this section and
15 any rule or regulation hereunder in civil proceedings.

16 (b) ELECTRONIC DISCLOSURE OF INSIDER TRANS-
17 ACTIONS.—

18 (1) DISCLOSURES OF TRADING.—The Commis-
19 sion shall, by rule, require—

20 (A) that a disclosure required by section
21 16 of the Securities Exchange Act of 1934 (15
22 U.S.C. 78p) of the sale of any securities of an
23 issuer, or any security futures product (as de-
24 fined in section 3(a)(56) of the Securities Ex-
25 change Act of 1934 (15 U.S.C. 78c(a)(56))) or

1 any security-based swap agreement (as defined
2 in section 206B of the Gramm-Leach-Bliley
3 Act) that is based in whole or in part on the
4 securities of such issuer, by an officer or direc-
5 tor of the issuer of those securities, or by a ben-
6 efcial owner of such securities, shall be made
7 available electronically to the Commission and
8 to the issuer by such officer, director, or bene-
9 ficial owner before the end of the next business
10 day after the day on which the transaction oc-
11 curs;

12 (B) that the information in such disclosure
13 be made available electronically to the public by
14 the Commission, to the extent permitted under
15 applicable law, upon receipt, but in no case
16 later than the end of the next business day
17 after the day on which the disclosure is received
18 under subparagraph (A); and

19 (C) that, in any case in which the issuer
20 maintains a corporate website, such information
21 shall be made available by such issuer on that
22 website, before the end of the next business day
23 after the day on which the disclosure is received
24 by the Commission under subparagraph (A).

1 (2) TRANSACTIONS INCLUDED.—The rule pre-
 2 scribed under paragraph (1) shall require the disclo-
 3 sure of the following transactions:

4 (A) Direct or indirect sales or other trans-
 5 fers of securities of the issuer (or any interest
 6 therein) to the issuer or an affiliate of the
 7 issuer.

8 (B) Loans or other extensions of credit ex-
 9 tended to an officer, director, or other person
 10 affiliated with the issuer on terms or conditions
 11 not otherwise available to the public.

12 (3) OTHER FORMATS; FORMS.—In the rule pre-
 13 scribed under paragraph (1), the Commission shall
 14 provide that electronic filing and disclosure shall be
 15 in lieu of any other format required for such disclo-
 16 sures on the day before the date of enactment of this
 17 subsection. The Commission shall revise such forms
 18 and schedules required to be filed with the Commis-
 19 sion pursuant to paragraph (1) as necessary to fa-
 20 cilitate such electronic filing and disclosure.

21 **SEC. 402. IMPROVED TRANSPARENCY OF CORPORATE DIS-**
 22 **CLOSURES.**

23 (a) MODIFICATION OF REGULATIONS REQUIRED.—
 24 The Commission shall revise its regulations under the se-
 25 curities laws pertaining to the disclosures required in peri-

1 odic financial reports and registration statements to re-
2 quire such reports to include adequate and appropriate
3 disclosure of—

4 (1) the issuer’s off-balance sheet transactions
5 and relationships with unconsolidated entities or
6 other persons, to the extent they are not disclosed in
7 the financial statements and are reasonably likely to
8 materially affect the liquidity or the availability of,
9 or requirements for, capital resources, or the finan-
10 cial condition or results of operations of the issuer;
11 and

12 (2) loans extended to officers, directors, or
13 other persons affiliated with the issuer on terms or
14 conditions that are not otherwise available to the
15 public.

16 (b) DEADLINE FOR RULEMAKING.—The Commission
17 shall—

18 (1) within 90 days after the date of enactment
19 of this Act, propose, and

20 (2) within 270 days after such date, prescribe,
21 the revisions to its regulations required by subsection (a).

22 (c) ANALYSIS REQUIRED.—

23 (1) TRANSPARENCY, COMPLETENESS, AND USE-
24 FULNESS OF FINANCIAL STATEMENTS.—The Com-
25 mission shall conduct an analysis of the extent to

1 which, consistent with the protection of investors
2 and the public interest, disclosure of additional or
3 reorganized information may be required to improve
4 the transparency, completeness, or usefulness of fi-
5 nancial statements and other corporate disclosures
6 filed under the securities laws.

7 (2) ALTERNATIVES TO BE CONSIDERED.—In
8 conducting the analysis required by paragraph (1),
9 the Commission shall consider—

10 (A) requiring the identification of the key
11 accounting principles that are most important
12 to the issuer’s reported financial condition and
13 results of operation, and that require manage-
14 ment’s most difficult, subjective, or complex
15 judgments;

16 (B) requiring an explanation, where mate-
17 rial, of how different available accounting prin-
18 ciples applied, the judgments made in their ap-
19 plication, and the likelihood of materially dif-
20 ferent reported results if different assumptions
21 or conditions were to prevail;

22 (C) in the case of any issuer engaged in
23 the business of trading non-exchange traded
24 contracts, requiring an explanation of such
25 trading activities when such activities require

1 the issuer to account for contracts at fair value,
2 but for which a lack of market price quotations
3 necessitates the use of fair value estimation
4 techniques;

5 (D) establishing requirements relating to
6 the presentation of information in clear and un-
7 derstandable format and language; and

8 (E) requiring such other disclosures, in-
9 cluded in the financial statements or in other
10 disclosure by the issuer, as would in the Com-
11 mission's view improve the transparency of such
12 issuer's financial statements and other required
13 corporate disclosures.

14 (3) RULES REQUIRED.—If the Commission, on
15 the basis of the analysis required by this subsection,
16 determines that it is necessary in the public interest
17 or for the protection of investors and would improve
18 the transparency of issuer financial statements, the
19 Commission may prescribe rules reflecting the re-
20 sults of such analysis and the considerations re-
21 quired by paragraph (2). In prescribing such rules,
22 the Commission may seek to minimize the paper-
23 work and cost burden on the issuer consistent with
24 achieving the public interest and investor protection
25 purposes of such rules.

1 **SEC. 403. IMPROVEMENTS IN REPORTING ON INSIDER**
2 **TRANSACTIONS AND RELATIONSHIPS.**

3 (a) SPECIFIC OBJECTIVES.—The Commission shall
4 initiate a proceeding to propose changes in its rules and
5 regulations with respect to financial reporting to improve
6 the transparency and clarity of the information available
7 to investors and to require increased financial disclosure
8 with respect to the following:

9 (1) INSIDER RELATIONSHIPS AND TRANS-
10 ACTIONS.—Relationships and transactions—

11 (A) between the issuer, affiliates of the
12 issuer, and officers, directors, or employees of
13 the issuer or such affiliates; and

14 (B) between officers, directors, employees,
15 or affiliates of the issuer and entities that are
16 not otherwise affiliated with the issuer,

17 to the extent such arrangement or transaction cre-
18 ates a conflict of interest for such persons. Such dis-
19 closure shall provide a description of such elements
20 of the transaction as are necessary for an under-
21 standing of the business purpose and economic sub-
22 stance of such transaction (including contingencies).

23 The disclosure shall provide sufficient information to
24 determine the effect on the issuer's financial state-
25 ments and describe compensation arrangements of
26 interested parties to such transactions.

1 (2) RELATIONSHIPS WITH PHILANTHROPIC OR-
2 GANIZATIONS.—Relationships between the registrant
3 or any executive officer of the registrant and any
4 not-for-profit organization on whose board a director
5 or immediate family member serves or of which a di-
6 rector or immediate family member serves as an offi-
7 cer or in a similar capacity. Relationships that shall
8 be disclosed include contributions to the organization
9 in excess of \$10,000 made by the registrant or any
10 executive officer in the last five years and any other
11 activity undertaken by the registrant or any execu-
12 tive officer that provides a material benefit to the or-
13 ganization. Material benefit includes lobbying.

14 (3) INSIDER-CONTROLLED AFFILIATES.—Rela-
15 tionships in which the registrant or any executive of-
16 ficer exercises significant control over an entity in
17 which a director or immediate family member owns
18 an equity interest or to which a director or imme-
19 diate family member has extended credit. Significant
20 control should be defined with reference to the con-
21 tractual and governance arrangements between the
22 registrant or executive officer, as the case may be,
23 and the entity.

24 (4) JOINT OWNERSHIP.—Joint ownership by a
25 registrant or executive officer and a director or im-

1 mediate family member of any real or personal prop-
2 erty.

3 (5) PROVISION OF SERVICES BY RELATED PER-
4 SONS.—The provision of any professional services,
5 including legal, financial advisory or medical serv-
6 ices, by a director or immediate family member to
7 any executive officer of the registrant in the last five
8 years.

9 (b) DEADLINES.—The Commission shall complete
10 the rulemaking required by this section within 180 days
11 after the date of enactment of this Act.

12 **SEC. 404. ANALYST CONFLICTS OF INTEREST.**

13 Section 15 of the Securities Exchange Act of 1934
14 (15 U.S.C. 78o) is amended—

15 (1) in subsection (c), by adding at the end the
16 following new paragraph:

17 “(9) ANALYST CONFLICTS OF INTEREST.—

18 “(A) RULES REQUIRED.—Except as the
19 Commission may otherwise provide pursuant to
20 section 36, no broker, dealer, or person associ-
21 ated with a broker or dealer shall violate such
22 rules as the Commission shall prescribe as nec-
23 essary and appropriate in the public interest
24 and for the protection of investors to prevent
25 conflicts of interest in the preparation and ren-

dering of equity security analyst recommendations. Such rules shall—

“(i) prohibit equity research analysts from holding any beneficial interest in any equity security in any issuer covered by such analyst;

“(ii) require a broker or dealer to include a legend on the first page of each equity security research report that investors should assume that the broker or dealer is seeking or will seek investment banking or other business from the company covered by such report (hereinafter in this paragraph referred to as the ‘covered company’);

“(iii) require a broker or dealer to include on each equity security research report a specific disclosure, on a percentage basis, of the aggregate distribution, calculated quarterly, of the intermediate-term rating category used by the broker or dealer for—

“(I) all stocks in the sector or industry group applicable to the covered company;

1 “(II) all stocks in the sector or
2 industry group applicable to the cov-
3 ered company for which, over the
4 prior 12 months, the broker or dealer
5 performed services in publicly an-
6 nounced equity underwritings and
7 merger and acquisition transactions
8 for which compensation was received
9 or to which the broker or dealer is en-
10 titled;

11 “(III) all stocks covered by the
12 broker’s or dealer’s equity security re-
13 search; and

14 “(IV) all stocks covered by the
15 broker’s or dealer’s equity security re-
16 search for which, over the prior 12
17 months, the broker or dealer per-
18 formed services in publicly announced
19 equity security underwriting or merg-
20 er and acquisition transactions for
21 which compensation was received or to
22 which the broker or dealer is entitled;

23 “(iv) require a broker or dealer to
24 separate completely the evaluation and de-
25 termination of compensation for United

1 States-based equity research analysts from
2 the broker's or dealer's investment banking
3 business by—

4 “(I) requiring that research ana-
5 lysts be compensated for only those
6 activities and services intended to ben-
7 efit the broker's or dealer's investor
8 clients;

9 “(II) with respect to analyst com-
10 pensation, requiring the broker or
11 dealer to prohibit anyone responsible
12 for determining research analysts'
13 compensation from soliciting from any
14 analyst, or considering in determining
15 any analyst's compensation, either
16 (aa) the amount of investment bank-
17 ing revenue received from clients cov-
18 ered by such analyst, or (bb) the ana-
19 lyst's participation in investment
20 banking transactions, except to the
21 extent such activities and services are
22 intended to benefit investors, as spe-
23 cifically contemplated by subclause
24 (I);

1 “(III) prohibiting research ana-
2 lysts from being evaluated by invest-
3 ment bankers for any work such ana-
4 lysts may do to generate investment
5 banking business, including participa-
6 tion in investment banking client so-
7 licitations;

8 “(IV) prohibiting investment
9 bankers from communicating with re-
10 search analysts or with anyone re-
11 sponsible for determining analysts’
12 compensation for the purpose of cal-
13 culating or influencing an individual
14 analyst’s compensation; and

15 “(V) prohibiting consideration of
16 any such input from investment bank-
17 ers by anyone responsible for deter-
18 mining research analysts’ compensa-
19 tion;

20 “(v) require a broker or dealer to es-
21 tablish or designate a specific management
22 structure to have responsibility for deter-
23 mining research analyst compensation and
24 to evaluate analysts for compensation pur-
25 poses based primarily upon—

1 “(I) quality of analysts’ research
2 and performance of their investment
3 recommendations;

4 “(II) competitive compensation
5 factors;

6 “(III) surveys and input from in-
7 vestor clients; and

8 “(IV) surveys and input from the
9 broker’s or dealer’s institutional sales,
10 equity trading, and private client divi-
11 sions, but not from the investment
12 banking division;

13 “(vi) require a broker or dealer to es-
14 tablish or designate a specific management
15 structure to supervise equity research rec-
16 ommendations for objectivity, integrity,
17 and a rigorous analytical framework in the
18 development of all recommendations;

19 “(vii) require a broker or dealer to im-
20 plement a system to monitor electronic
21 communications between investment bank-
22 ers and equity security research analysts;

23 “(viii) require that equity security re-
24 search analyst participation with invest-
25 ment bankers in solicitations for any po-

1 tential investment banking transaction be
2 approved in advance by the management
3 structure established under clause (v) and
4 be disclosed to the management structure
5 established under clause (vi);

6 “(ix) require that each equity security
7 research report covering a particular com-
8 pany to disclose whether, within the prior
9 12 months, any equity security research
10 analyst covering such company has partici-
11 pated in a solicitation with or at the re-
12 quest of investment bankers for an invest-
13 ment banking transaction underwritten by
14 the broker or dealer;

15 “(x) prohibit equity security analysts,
16 investment bankers, or any other employ-
17 ees of the broker or dealer from promising,
18 implying, offering, or communicating in
19 any way that a specific recommendation or
20 change of an existing recommendation will
21 be made in exchange for the awarding of
22 an investment banking transaction to the
23 broker or dealer;

24 “(xi) prohibit equity security analysts
25 from changing any research recommenda-

1 tion because of the subject company’s deci-
2 sion not to retain the broker or dealers for
3 investment banking services;

4 “(xii) require that the materials used
5 in connection with any solicitation for a
6 public equity underwriting by the broker or
7 dealer include a written disclosure that—

8 “(I) the broker or dealer pro-
9 hibits employees from, directly or indi-
10 rectly, offering a favorable research
11 rating or specific price target, or of-
12 fering to change a rating or price tar-
13 get to a subject company as consider-
14 ation or inducement for the receipt of
15 business or for compensation; and

16 “(II) equity security research an-
17 alysts are prohibited from being com-
18 pensated for involvement in invest-
19 ment banking transactions except to
20 the extent that such participation is
21 intended to benefit investor clients;

22 “(xiii) require that, whenever a broker
23 or dealer terminates coverage of any
24 issuer, the broker or dealer publish a re-
25 port disclosing—

1 “(I) the broker’s or dealer’s ter-
2 mination of coverage;

3 “(II) the rationale for the deci-
4 sion to terminate coverage; and

5 “(III) that, effective upon the
6 termination of coverage, the last rec-
7 ommendation issued for the particular
8 stock should not be relied upon going
9 forward;

10 “(xiv) require a broker or dealer to
11 designate an employee or group of employ-
12 ees as a compliance monitor to ensure
13 compliance with the policies required by
14 this paragraph, and to be available to re-
15 search analysts to address issues of actual
16 or perceived undue influence or pressure
17 from investment banking or any other
18 source; and

19 “(xv) otherwise prohibit conflicts of
20 interest in the preparation or rendering of
21 equity research analyst recommendations.

22 “(B) CONSULTATION.—The Commission
23 shall consult periodically the securities commis-
24 sions (or any agency or office performing like
25 functions) of the States concerning the ade-

1 quacy of the requirements established under
2 this paragraph.”.

3 **SEC. 405. INDEPENDENT DIRECTORS AND OTHER COR-**
4 **PORATE GOVERNANCE REQUIREMENTS.**

5 (a) IN GENERAL.—The Securities and Exchange
6 Commission shall by rule require each national securities
7 exchange and national securities association to adopt
8 rules, effective no later than 6 months after the date of
9 enactment of this Act, to require that the qualitative list-
10 ing standards concerning corporate governance of the ex-
11 change or association require that an issuer meet the fol-
12 lowing requirements:

13 (1) INDEPENDENT DIRECTORS.—

14 (A) MAJORITY REQUIREMENT.—An issuer
15 shall have a majority of independent directors.

16 (B) QUALIFICATION AS INDEPENDENT DI-
17 RECTOR.—

18 (i) No director may qualify as an
19 independent director unless the board of
20 directors affirmatively determines that the
21 director has no material relationship with
22 the issuer, either directly or as a partner,
23 shareholder, or officer of an organization
24 that has a close relationship with the
25 issuer.

1 (ii) No director who is a former em-
2 ployee of the issuer may qualify as an
3 independent director until 5 years after the
4 employment has ended.

5 (iii) No director who is, or in the past
6 5 years has been, affiliated with or em-
7 ployed by a present or former auditor of
8 the issuer (or of an affiliate) may qualify
9 as an independent director until 5 years
10 after the end of either the affiliation, the
11 employment, or the auditing relationship.

12 (iv) No director may qualify as an
13 independent director if such director is, or
14 in the past 5 years has been, part of an
15 interlocking directorate in which an execu-
16 tive officer of the issuer serves on the com-
17 pensation committee of another company
18 that employs the director.

19 (v) No director may qualify as an
20 independent director if an immediate fam-
21 ily member of such director would not
22 qualify as an independent director under
23 clauses (i) through (iv).

24 (2) NON-MANAGEMENT DIRECTORS.—The non-
25 management directors of an issuer shall meet at reg-

1 ularly scheduled executive sessions without manage-
2 ment, and such directors shall be required to des-
3 ignate who will preside at such sessions.

4 (3) NOMINATING AND CORPORATE GOVERN-
5 ANCE COMMITTEE.—

6 (A) IN GENERAL.—An issuer shall have a
7 nominating and corporate governance com-
8 mittee composed entirely of independent direc-
9 tors.

10 (B) WRITTEN CHARTER.—The nominating
11 and corporate governance committee shall have
12 a written charter that specifies—

13 (i) the committee’s purpose, which, at
14 minimum, shall be to identify individuals
15 qualified to become board members, and to
16 select, or to recommend that the board se-
17 lect, the director nominees for the next an-
18 nual meeting of shareholders, and to de-
19 velop and recommend to the board a set of
20 corporate governance principles applicable
21 to the issuer;

22 (ii) the committee’s goals and respon-
23 sibilities, which shall reflect, at minimum,
24 the board’s criteria for selecting new direc-

tors, and oversight of the evaluation of the board and management; and

(iii) the criteria for an annual performance evaluation of the committee.

(4) COMPENSATION COMMITTEE.—

(A) IN GENERAL.—An issuer shall have a compensation committee composed entirely of independent directors.

(B) WRITTEN CHARTER.—The compensation committee shall have a written charter that specifies—

(i) the committee's purpose, which, at minimum, shall be to discharge the board's responsibilities relating to compensation of the issuer's executives, and to produce an annual report on executive compensation for inclusion in the issuer's proxy statement, in accordance with applicable rules and regulations;

(ii) the committee's duties and responsibilities, which, at minimum, shall be to review and improve corporate goals and objectives relevant to executive compensation, evaluate the executives' performance in light of these goals and objectives, and

1 set the executive compensation level based
2 on this evaluation, and to make rec-
3 ommendations to the board with respect to
4 incentive-compensation plans and equity-
5 based plans; and

6 (iii) the criteria for an annual per-
7 formance evaluation of the compensation
8 committee.

9 (5) INDEPENDENCE REQUIREMENTS FOR MEM-
10 BERSHIP ON AUDIT COMMITTEE.—An issuer shall
11 implement the following additional requirements re-
12 garding audit committees:

13 (A) Director's fees shall be the only com-
14 pensation that an audit committee member may
15 receive from the issuer.

16 (B) A director who is an independent di-
17 rector within the requirements of paragraph
18 (1), but who also holds 20 percent or more of
19 an issuer's stock, or who is general partner,
20 controlling shareholder, or officer of any such
21 holder, shall not chair, or be a voting member
22 of, the audit committee.

23 (C) The audit committee chair shall have
24 accounting or related financial management ex-
25 pertise.

1 (6) INCREASED AUTHORITY AND WRITTEN
2 CHARTER OF AUDIT COMMITTEE.—An issuer shall
3 grant to the audit committee the sole authority to
4 hire and fire independent auditors, and shall approve
5 any significant non-audit relationship of the issuer
6 with the independent auditors. The audit committee
7 shall have a written charter that specifies—

8 (A) the committee’s purpose, which, at
9 minimum, shall be—

10 (i) to assist board oversight of—

11 (I) the integrity of the issuer’s fi-
12 nancial statements;

13 (II) the issuer’s compliance with
14 legal and regulatory requirements;

15 (III) the independent auditor’s
16 qualifications and independence; and

17 (IV) audit function and inde-
18 pendent auditors; and

19 (ii) to prepare the report that the
20 Commission’s rules require be included in
21 the issuer’s annual proxy statement;

22 (B) the duties and responsibilities of the
23 audit committee, which, at minimum, shall be—

24 (i) to retain and terminate the issuer’s
25 independent auditors;

1 (ii) to obtain and review, on an an-
2 nual basis, a report by the independent
3 auditor describing the firm's internal qual-
4 ity control standards and any material
5 issues raised by the most recent internal
6 quality control review, or peer review, of
7 the firm, or by any inquiry or investigation
8 by governmental or professional authori-
9 ties, within the preceding 5 years, respect-
10 ing one or more independent audits carried
11 out by the firm, and any steps to be taken
12 to deal with any such issues;

13 (iii) to examine all relationships be-
14 tween the independent auditor and the
15 issuer in order to assess the auditor's inde-
16 pendence;

17 (iv) to discuss the audited financial
18 statements and quarterly financial state-
19 ments with management and the inde-
20 pendent auditor;

21 (v) to discuss earnings press releases,
22 as well as financial information and earn-
23 ings guidance provided to analysts and rat-
24 ing agencies;

1 (vi) to discuss policies with respect to
2 risk assessment and risk management;

3 (vii) to meet separately, on at least a
4 quarterly basis, with management, with in-
5 ternal auditors, and with independent audi-
6 tors;

7 (viii) to review with the independent
8 auditor any audit problems or difficulties
9 and management's response;

10 (ix) to set clear hiring policies for em-
11 ployees or former employees of the inde-
12 pendent auditors; and

13 (x) to report regularly to the board of
14 directors on the performance of the duties
15 and responsibilities of the committee as
16 outlined in this subparagraph; and

17 (C) the criteria for an annual performance
18 evaluation of the audit committee.

19 (7) SHAREHOLDER CONTROL OF EQUITY-COM-
20 PENSATION PLANS.—An issuer shall provide share-
21 holders of the issuer the opportunity to vote on all
22 equity-compensation plans.

23 (8) CORPORATE GOVERNANCE GUIDELINES.—
24 An issuer shall adopt and disclose its corporate gov-

1 ernance guidelines. Such corporate governance
2 guidelines shall specify—

3 (A) director qualification standards;

4 (B) director responsibilities;

5 (C) director access to management and
6 independent advisers;

7 (D) director compensation;

8 (E) director orientation and continuing
9 education;

10 (F) management succession; and

11 (G) annual performance evaluation of the
12 board.

13 (9) CODE OF BUSINESS CONDUCT AND ETHICS
14 STANDARDS.—An issuer shall adopt and disclose a
15 code of business conduct and ethics standards for di-
16 rectors, officers, and employees which, at minimum,
17 includes standards on—

18 (A) conflicts of interest;

19 (B) use of corporate property, information,
20 or position for personal gain;

21 (C) confidentiality;

22 (D) issues of fair dealing with the issuer's
23 customers, suppliers, competitors, and employ-
24 ees;

- 1 (E) protection and proper use of the
2 issuer's assets;
- 3 (F) compliance with laws, rules, and regu-
4 lations (including insider trading laws); and
- 5 (G) methods of encouraging the reporting
6 of any illegal or unethical behavior.

7 **Subtitle B—Strengthening Auditor**
8 **Independence and Industry**
9 **Oversight**

10 **Chapter 1—Auditor Independence**

11 **SEC. 411. SERVICES OUTSIDE THE SCOPE OF PRACTICE OF**
12 **AUDITORS.**

13 (a) PROHIBITED ACTIVITIES.—Section 10A of the
14 Securities Exchange Act of 1934 (15 U.S.C. 78j–1) is
15 amended by adding at the end the following:

16 “(g) PROHIBITED ACTIVITIES.—It shall be unlawful
17 for a registered public accounting firm (and any associated
18 person of that firm, to the extent determined appropriate
19 by the Commission) that performs for any issuer any audit
20 required by this title or the rules of the Commission under
21 this title or the rules of the public regulatory organization
22 established under section 421, to provide to that issuer,
23 contemporaneously with the audit, any non-audit service,
24 including—

1 “(1) bookkeeping or other services related to
2 the accounting records or financial statements of the
3 audit client;

4 “(2) financial information systems design and
5 implementation;

6 “(3) appraisal or valuation services, fairness
7 opinions, or contribution-in-kind reports;

8 “(4) actuarial services;

9 “(5) internal audit outsourcing services;

10 “(6) management functions or human re-
11 sources;

12 “(7) broker or dealer, investment adviser, or in-
13 vestment banking services;

14 “(8) legal services and expert services unrelated
15 to the audit; and

16 “(9) any other service that the public regu-
17 latory organization established under section 421 de-
18 termines, by regulation, is impermissible.

19 “(h) PREAPPROVAL REQUIRED FOR NON-AUDIT
20 SERVICES.—A registered public accounting firm may en-
21 gage in any non-audit service, including tax services, that
22 is not described in any of paragraphs (1) through (9) of
23 subsection (g) for an audit client, only if the activity is
24 approved in advance by the audit committee of the issuer,
25 in accordance with subsection (i).”.

1 (b) EXEMPTION AUTHORITY.—The public regulatory
 2 organization established under section 421 may, on a case
 3 by case basis, exempt any person, issuer, public accounting
 4 firm, or transaction from the prohibition on the provision
 5 of services under section 10A(g) of the Securities Ex-
 6 change Act of 1934 (as added by this section), to the ex-
 7 tent that such exemption is necessary or appropriate in
 8 the public interest and is consistent with the protection
 9 of investors, and subject to review by the Commission in
 10 the same manner as for rules of the public regulatory or-
 11 ganization established under section 421 under section
 12 107.

13 **SEC. 412. PREAPPROVAL REQUIREMENTS.**

14 Section 10A of the Securities Exchange Act of 1934
 15 (15 U.S.C. 78j–1), as amended by this Act, is amended
 16 by adding at the end the following:

17 “(i) PREAPPROVAL REQUIREMENTS.—

18 “(1) IN GENERAL.—

19 “(A) AUDIT COMMITTEE ACTION.—All au-
 20 diting services (which may entail providing com-
 21 fort letters in connection with securities
 22 underwritings) and non-audit services, other
 23 than as provided in subparagraph (B), provided
 24 to an issuer by the auditor of the issuer shall

1 be preapproved by the audit committee of the
2 issuer.

3 “(B) DE MINIMUS EXCEPTION.—The
4 preapproval requirement under subparagraph
5 (A) is waived with respect to the provision of
6 non-audit services for an issuer, if—

7 “(i) the aggregate amount of all such
8 non-audit services provided to the issuer
9 constitutes not more than 5 percent of the
10 total amount of revenues paid by the issuer
11 to its auditor;

12 “(ii) such services were not recognized
13 by the issuer at the time of the engage-
14 ment to be non-audit services; and

15 “(iii) such services are promptly
16 brought to the attention of the audit com-
17 mittee of the issuer and approved by the
18 audit committee prior to the completion of
19 the audit, by 1 or more members of the
20 audit committee who are members of the
21 board of directors to whom authority to
22 grant such approvals has been delegated by
23 the audit committee.

24 “(2) DISCLOSURE TO INVESTORS.—Approval by
25 an audit committee of an issuer under this sub-

1 section of a non-audit service to be performed by the
2 auditor of the issuer shall be disclosed to investors
3 in periodic reports required by section 13(a).

4 “(3) DELEGATION AUTHORITY.—The audit
5 committee of an issuer may delegate to 1 or more
6 designated members of the audit committee who are
7 independent directors of the board of directors, the
8 authority to grant preapprovals required by this sub-
9 section. The decisions of any member to whom au-
10 thority is delegated under this paragraph to
11 preapprove an activity under this subsection shall be
12 presented to the full audit committee at each of its
13 scheduled meetings.

14 “(4) APPROVAL OF AUDIT SERVICES FOR
15 OTHER PURPOSES.—In carrying out its duties under
16 subsection (m)(2), if the audit committee of an
17 issuer approves an audit service within the scope of
18 the engagement of the auditor, such audit service
19 shall be deemed to have been preapproved for pur-
20 poses of this subsection.”.

21 **SEC. 413. AUDIT PARTNER ROTATION.**

22 Section 10A of the Securities Exchange Act of 1934
23 (15 U.S.C. 78j–1), as amended by this Act, is amended
24 by adding at the end the following:

1 “(j) AUDIT PARTNER ROTATION.—It shall be unlaw-
 2 ful for a registered public accounting firm to provide audit
 3 services to an issuer if the lead audit partner (having pri-
 4 mary responsibility for the audit) or the audit partner re-
 5 sponsible for reviewing the audit that is assigned to per-
 6 form those audit services has performed audit services for
 7 that issuer in each of the 5 previous fiscal years of that
 8 issuer.”.

9 **SEC. 414. AUDITOR REPORTS TO AUDIT COMMITTEES.**

10 Section 10A of the Securities Exchange Act of 1934
 11 (15 U.S.C. 78j–1), as amended by this Act, is amended
 12 by adding at the end the following:

13 “(k) REPORTS TO AUDIT COMMITTEES.—Each reg-
 14 istered public accounting firm that performs for any issuer
 15 any audit required by this title shall timely report to the
 16 audit committee of the issuer—

17 “(1) all critical accounting policies and prac-
 18 tices to be used;

19 “(2) all alternative treatments of financial in-
 20 formation within generally accepted accounting prin-
 21 ciples that have been discussed with management of-
 22 ficials of the issuer, ramifications of the use of such
 23 alternative disclosures and treatments, and the
 24 treatment preferred by the registered public account-
 25 ing firm; and

1 “(3) other material written communications be-
2 tween the registered public accounting firm and the
3 management of the issuer, such as any management
4 letter or schedule of unadjusted differences.”.

5 **SEC. 415. CONFORMING AMENDMENTS.**

6 (a) DEFINITIONS.—Section 3(a) of the Securities Ex-
7 change Act of 1934 (15 U.S.C. 78c(a)) is amended by
8 adding at the end the following:

9 “(58) AUDIT COMMITTEE.—The term ‘audit
10 committee’ means—

11 “(A) a committee (or equivalent body) es-
12 tablished by and amongst the board of directors
13 of an issuer for the purpose of overseeing the
14 accounting and financial reporting processes of
15 the issuer and audits of the financial state-
16 ments of the issuer; and

17 “(B) if no such committee exists with re-
18 spect to an issuer, the entire board of directors
19 of the issuer.

20 “(59) REGISTERED PUBLIC ACCOUNTING
21 FIRM.—The term ‘registered public accounting firm’
22 has the same meaning as in section 3 of the Public
23 Company Accounting Reform and Investor Protec-
24 tion Act of 2002.”.

1 (b) AUDITOR REQUIREMENTS.—Section 10A of the
2 Securities Exchange Act of 1934 (15 U.S.C. 78j–1) is
3 amended—

4 (1) by striking “an independent public account-
5 ant” each place that term appears and inserting “a
6 registered public accounting firm”;

7 (2) by striking “the independent public ac-
8 countant” each place that term appears and insert-
9 ing “the registered public accounting firm”;

10 (3) in subsection (c), by striking “No inde-
11 pendent public accountant” and inserting “No reg-
12 istered public accounting firm”; and

13 (4) in subsection (b)—

14 (A) by striking “the accountant” each
15 place that term appears and inserting “the
16 firm”;

17 (B) by striking “such accountant” each
18 place that term appears and inserting “such
19 firm”; and

20 (C) in paragraph (4), by striking “the ac-
21 countant’s report” and inserting “the report of
22 the firm”.

23 (c) OTHER REFERENCES.—The Securities Exchange
24 Act of 1934 (15 U.S.C. 78a et seq.) is amended—

1 (1) in section 12(b)(1) (15 U.S.C. 78l(b)(1)),
 2 by striking “independent public accountants” each
 3 place that term appears and inserting “a registered
 4 public accounting firm”; and

5 (2) in subsections (e) and (i) of section 17 (15
 6 U.S.C. 78q), by striking “an independent public ac-
 7 countant” each place that term appears and insert-
 8 ing “a registered public accounting firm”.

9 **SEC. 416. CONFLICTS OF INTEREST.**

10 Section 10A of the Securities Exchange Act of 1934
 11 (15 U.S.C. 78j–1), as amended by this Act, is amended
 12 by adding at the end the following:

13 “(l) CONFLICTS OF INTEREST.—It shall be unlawful
 14 for a registered public accounting firm to perform for an
 15 issuer any audit service required by this title, if a chief
 16 executive officer, controller, chief financial officer, chief
 17 accounting officer or any person serving in an equivalent
 18 position for the issuer was employed by that registered
 19 independent public accounting firm and participated in
 20 any capacity in the audit of that issuer during the 1-year
 21 period preceding the date of the initiation of the audit.”.

22 **SEC. 417. STUDY OF MANDATORY ROTATION OF REG-**
 23 **ISTERED PUBLIC ACCOUNTING FIRMS.**

24 (a) STUDY AND REVIEW REQUIRED.—The Comp-
 25 troller General of the United States shall conduct a study

1 and review of the potential effects of requiring the manda-
2 tory rotation of registered public accounting firms.

3 (b) REPORT REQUIRED.—Not later than 1 year after
4 the date of enactment of this Act, the Comptroller General
5 shall submit a report to the Committee on Banking, Hous-
6 ing, and Urban Affairs of the Senate and the Committee
7 on Financial Services of the House of Representatives on
8 the results of the study and review required by this sec-
9 tion.

10 (c) DEFINITION.—For purposes of this section, the
11 term “mandatory rotation” refers to the imposition of a
12 limit on the period of years in which a particular reg-
13 istered public accounting firm may be the auditor of
14 record for a particular issuer.

15 **SEC. 418. COMMISSION AUTHORITY.**

16 (a) COMMISSION REGULATIONS.—Not later than 180
17 days after the date of enactment of this Act, the Commis-
18 sion shall issue final regulations to carry out each of sub-
19 sections (g) through (l) of section 10A of the Securities
20 Exchange Act of 1934, as added by this title.

21 (b) AUDITOR INDEPENDENCE.—It shall be unlawful
22 for any registered public accounting firm (or an associated
23 person thereof, as applicable) to prepare or issue any audit
24 report with respect to any issuer, if the firm or associated
25 person engages in any activity with respect to that issuer

1 prohibited by any of subsections (g) through (l) of section
 2 10A of the Securities Exchange Act of 1934, as added
 3 by this title, or any rule or regulation of the Commission
 4 or of the public regulatory organization established under
 5 section 421 issued thereunder.

6 **SEC. 419. CONSIDERATIONS BY APPROPRIATE STATE REGU-**
 7 **LATORY AUTHORITIES.**

8 It is the intention of this Act that, in supervising non-
 9 registered public accounting firms and their associated
 10 persons, appropriate State regulatory authorities should
 11 make an independent determination of the proper stand-
 12 ards applicable, particularly taking into consideration the
 13 size and nature of the business of the accounting firms
 14 they supervise. The standards applied by the public regu-
 15 latory organization established under section 421 under
 16 this Act should not be presumed to be applicable for pur-
 17 poses of this section for small- and medium-sized nonreg-
 18 istered public accounting firms.

19 **Chapter 2—Industry Oversight**

20 **SEC. 421. AUDITOR OVERSIGHT.**

21 (a) **CERTIFIED FINANCIAL STATEMENT REQUIRE-**
 22 **MENTS.**—If a financial statement is required by the secu-
 23 rities laws or any rule or regulation thereunder to be cer-
 24 tified by an independent public or certified accountant, an
 25 accountant shall not be considered to be qualified to cer-

1 tify such financial statement, and the Securities and Ex-
2 change Commission shall not accept a financial statement
3 certified by an accountant, unless such accountant—

4 (1) is subject to a system of review by a public
5 regulatory organization that complies with the re-
6 quirements of this section and the rules prescribed
7 by the Commission under this section; and

8 (2) has not been determined in the most recent
9 review completed under such system to be not quali-
10 fied to certify such a statement.

11 (b) ESTABLISHMENT OF PRO.—

12 (1) ESTABLISHMENT REQUIRED.—Not later
13 than 90 days after the date of enactment of this sec-
14 tion, the Commission shall establish a public regu-
15 latory organization to perform the duties set forth in
16 this section.

17 (2) CHAIRMAN.—The Chairman of the public
18 regulatory organization shall be appointed by the
19 Commission for a term of 5 years.

20 (3) APPOINTMENT OF PUBLIC REGULATORY OR-
21 GANIZATION MEMBERS.—There shall be 6 additional
22 public regulatory organization members, who shall
23 be selected jointly by the Chairman of the public
24 regulatory organization and the Chairman of the
25 Commission.

1 (4) ACCOUNTANT MEMBERS.—Up to 2 of the
2 members may be present or former certified public
3 accountants, provided such members—

4 (A) are not currently in public practices;

5 (B) have not been a person associated with
6 a public accounting firm for a period of at least
7 3 years; and

8 (C) agree to not be a person associated
9 with a public accounting firm or to receive con-
10 sulting fees from a public accounting firm for
11 a period of 5 years after leaving the public reg-
12 ulatory organization.

13 (5) NOMINATIONS.—In making appointments of
14 members, the Chairman of the public regulatory or-
15 ganization and the Chairman of the Commission
16 shall consult with, and make appointments from
17 nominations received from—

18 (A) institutional investors;

19 (B) public employee pension plans;

20 (C) pension plans organized pursuant to
21 the Employee Retirement Income Security Act
22 of 1974; and

23 (D) pension plans organized pursuant to
24 the Taft-Hartley Act.

1 (6) TERMS.—The members of the public regu-
2 latory organization shall have terms of 4 years, ex-
3 cept that the Chairman of the public regulatory or-
4 ganization and the Chairman of the Commission
5 shall adopt procedures for staggering the initial
6 terms of the members first so appointed to provide
7 for a reasonable overlapping of the terms of office
8 of subsequently elected members.

9 (7) FULL-TIME BASIS.—The members of the
10 public regulatory organization shall serve on a full-
11 time basis, severing all business ties with former
12 firms or employers prior to beginning service on the
13 public regulatory organization.

14 (8) RULES.—Following selection of the initial
15 members of the public regulatory organization, the
16 public regulatory organization shall propose and
17 adopt rules, which shall provide for—

18 (A) the operation and administration of
19 the public regulatory organization, including the
20 compensation of the members of the public reg-
21 ulatory organization, which shall be at a level
22 comparable to similar professional positions in
23 the private sector;

24 (B) the appointment and compensation of
25 such employees, attorneys, and consultants as

1 may be necessary or appropriate to carry out
2 the public regulatory organization's functions
3 under this section;

4 (C) the registration of public accounting
5 firms with the public regulatory organization
6 pursuant to subsection (c); and

7 (D) the matters described in subsections
8 (d) and (e).

9 (9) FUNDING OF THE PUBLIC REGULATORY OR-
10 GANIZATION.—

11 (A) SELF-FINANCING.—The public regu-
12 latory organization shall establish rules for the
13 assessment and collection of fees sufficient to
14 recover the costs and expenses of the public
15 regulatory organization and to permit the pub-
16 lic regulatory organization to operate on a self-
17 financing basis.

18 (B) ASSESSMENT AND COLLECTION.—The
19 fees shall be assessed on issuers that file any fi-
20 nancial statements, reports, or other documents
21 with the Commission under the securities laws
22 that must be certified by a public accounting
23 firm. The fees shall be collected through the
24 public accounting firm that certifies such state-
25 ment, report, or document.

1 (C) PAYMENT A CONDITION OF REGISTRA-
2 TION.—The public regulatory organization shall
3 terminate or suspend the registration under
4 subsection (c) of any public accounting firm
5 that fails to collect and transmit a fee assessed
6 under this subsection.

7 (c) REGISTRATION WITH PUBLIC REGULATORY OR-
8 GANIZATION.—

9 (1) REGISTRATION REQUIRED.—Beginning 1
10 year after the date on which all initial members of
11 the public regulatory organization have been selected
12 in accordance with subsection (b), it shall be unlaw-
13 ful for a public accounting firm to furnish an ac-
14 countant's report on any financial statement, report,
15 or other document required to be filed with the
16 Commission under any Federal securities law, unless
17 such firm is registered with the public regulatory or-
18 ganization.

19 (2) APPLICATION FOR REGISTRATION.—A pub-
20 lic accounting firm may be registered under this
21 subsection by filing with the public regulatory orga-
22 nization an application for registration in such form
23 and containing such information as the public regu-
24 latory organization, by rule, may prescribe. Each ap-
25 plication shall include—

1 (A) the names of all clients of the public
2 accounting firm for which the firm furnishes ac-
3 countant's reports on financial statements, re-
4 ports, or other documents filed with the Com-
5 mission;

6 (B) financial information of the public ac-
7 counting firm for its most recent fiscal year, in-
8 cluding its annual revenues from accounting
9 and auditing services, its assets, and its liabil-
10 ities;

11 (C) a statement of the public accounting
12 firm's policies and procedures with respect to
13 quality control of its accounting and auditing
14 practice;

15 (D) information relating to criminal, civil,
16 or administrative actions or formal disciplinary
17 proceedings pending against such firm, or any
18 person associated with such firm, in connection
19 with an accountant's report furnished by such
20 firm;

21 (E) a list of persons associated with the
22 public accounting firm who are certified public
23 accountants, including any State professional li-
24 cense or certification number for each such per-
25 son; and

1 (F) such other information that is reason-
2 ably related to the public regulatory organiza-
3 tion's responsibilities as the public regulatory
4 organization considers necessary or appropriate.

5 (3) PERIODIC REPORTS.—Once in each year, or
6 more frequently as the public regulatory organiza-
7 tion, by rule, may prescribe, each public accounting
8 firm registered with the public regulatory organiza-
9 tion shall submit reports to the public regulatory or-
10 ganization updating the information contained in its
11 application for registration and containing such ad-
12 ditional information that is reasonably related to the
13 public regulatory organization's responsibilities as
14 the public regulatory organization, by rule, may pre-
15 scribe.

16 (4) EXEMPTIONS.—The Commission, by rule or
17 order, upon its own motion or upon application, may
18 conditionally or unconditionally exempt any public
19 accounting firm or any accountant's report, or any
20 class of public accounting firms or any class of ac-
21 countant's reports, from any provisions of this sec-
22 tion or the rules or regulations issued hereunder, if
23 the Commission finds that such exemption is con-
24 sistent with the public interest, the protection of in-
25 vestors, and the purposes of this section.

1 (5) CONFIDENTIALITY.—The public regulatory
2 organization may, by rule, designate portions of the
3 filings required pursuant to paragraphs (2) and (3)
4 as privileged and confidential. This paragraph shall
5 be considered to be a statute described in section
6 552(b)(3)(B) of title 5, United States Code, for pur-
7 poses of that section 552.

8 (d) DUTIES REGARDING QUALITY CONTROL.—

9 (1) OBJECTIVES; ATTAINMENT.—The public
10 regulatory organization shall seek to promote a high
11 level of professional conduct among public account-
12 ing firms registered with the public regulatory orga-
13 nization, to improve the quality of audit services pro-
14 vided by such firms, and, in general, to protect in-
15 vestors and promote the public interest. The public
16 regulatory organization shall attain these
17 objectives—

18 (A) by establishing standards regarding
19 the performance of financial audits in accord-
20 ance with the requirements of paragraph (2);

21 (B) by the direct performance of quality
22 reviews and inspections of audits in accordance
23 with the requirements of paragraphs (3) and
24 (4); and

1 (C) by the supervision and oversight of
2 peer review organizations in accordance with
3 the requirements of paragraph (5).

4 (2) AUDIT QUALITY STANDARDS.—

5 (A) IN GENERAL.—The public regulatory
6 organization shall, by rule, establish quality
7 standards applicable to the conduct of audit
8 services provided by public accounting firms.
9 Such standards shall include—

- 10 (i) independence standards;
- 11 (ii) quality control standards;
- 12 (iii) professional and ethical stand-
13 ards; and
- 14 (iv) such other standards as the public
15 regulatory organization determines to be
16 necessary to carry out the objectives speci-
17 fied in paragraph (1).

18 (B) SPECIFIC CONTENTS OF STAND-
19 ARDS.—In establishing the quality standards
20 required by subparagraph (A), the public regu-
21 latory organization shall also establish—

- 22 (i) procedures for the monitoring by
23 public accounting firms of their compliance
24 with professional ethical standards estab-
25 lished by the public regulatory organiza-

1 tion, including its independence from its
2 audit clients;

3 (ii) procedures for the assignment of
4 personnel to audit engagements;

5 (iii) procedures for consultation within
6 a public accounting firm or with other ac-
7 countants relating to accounting and audit-
8 ing questions;

9 (iv) procedures for the supervision of
10 audit work;

11 (v) procedures for the review of deci-
12 sions to accept and retain audit clients;

13 (vi) procedures for the internal inspec-
14 tion of the public accounting firms own
15 compliance with such policies and proce-
16 dures;

17 (vii) requirements for public account-
18 ing firms to prepare and maintain for a
19 period of no less than 7 years, audit work
20 papers and other information related to
21 any audit report, in sufficient detail to
22 support the conclusions reached in an
23 audit report issued by a public accounting
24 firm; and

(viii) procedures establishing “concurring” or “second” partner review systems for the evaluation and review of audit work by a partner that is not in charge of the conduct of the audit.

(3) DIRECT REVIEWS OF PUBLIC ACCOUNTING

FIRMS.—The public regulatory organization shall, by rule, establish procedures for the conduct of a continuing program of inspections of each public accounting firm registered with the public regulatory organization to assess compliance by such firm, and by persons associated with such firm, with applicable provisions of this title, the securities laws, the rules and regulations thereunder, the rules adopted by the public regulatory organization, and professional standards. Except as provided in paragraph (5), the public regulatory organization shall annually inspect each public accounting firm that audits more than 100 issuers on an ongoing annual basis, to the extent practicable, and all other public accounting firms no less than at least once every 3 years. In conducting such inspections, the public regulatory organization shall, among other things, inspect selected audit and review engagements. The review shall include evaluations of the firm’s quality control

1 procedures and compliance with all legal and ethical
2 requirements. In connection with each review, the
3 public regulatory organization shall prepare a report
4 of its findings and such report, accompanied by any
5 letter of comments by the public regulatory organi-
6 zation or reviewer and any letter of response from
7 the firm under review, shall be made available to the
8 public. The public regulatory organization shall take
9 any appropriate disciplinary or remedial action
10 based on its findings after completion of such review
11 and an opportunity for a hearing.

12 (4) QUALITY REVIEW OF INDIVIDUAL AU-
13 DITS.—The public regulatory organization shall, by
14 rule, establish procedures for the conduct of direct
15 inspection and review of individual audits of issuers
16 and standards under which it will evaluate audit
17 service quality. A finding by the public regulatory
18 organization that an individual audit of an issuer did
19 or did not meet the standards of the public regu-
20 latory organization with respect to the quality of the
21 audit shall not be construed in any action arising
22 out of the securities laws as indicative of compliance
23 or noncompliance with the securities laws or with
24 any standard of liability arising thereunder.

1 (5) USE OF PROFESSIONAL PEER REVIEW OR-
2 GANIZATIONS.—

3 (A) OPTION TO UTILIZE PEER REVIEW OR-
4 GANIZATIONS.—The public regulatory organiza-
5 tion may, by rule, establish requirements for
6 the use of peer review organizations for the
7 purposes of conducting the continuing program
8 of inspections to assess compliance as required
9 by paragraph (3) of each public accounting firm
10 registered with the public regulatory organiza-
11 tion. Such rule shall provide for appropriate
12 oversight and supervision of such peer review
13 organization by the public regulatory organiza-
14 tion to ensure that such inspections meet the
15 requirements of such paragraph.

16 (B) PENALTIES.—If the public regulatory
17 organization establishes requirements for the
18 conduct of peer reviews under subparagraph
19 (A), the violation by a public accounting firm or
20 a person associated with such a firm of a rule
21 of the peer review organization to which the
22 firm belongs shall constitute grounds for—

23 (i) the imposition of disciplinary sanc-
24 tions by the public regulatory organization
25 pursuant to subsection (e); and

1 (ii) denial to the public accounting
2 firm or person associated with such firm of
3 the privilege of appearing or practicing be-
4 fore the Commission.

5 (6) CONFIDENTIALITY.—Except as otherwise
6 provided by this section, all reports, memoranda,
7 and other information provided to the public regu-
8 latory organization solely for purposes of paragraph
9 (3) or (4), or to a peer review organization certified
10 by the public regulatory organization, shall be con-
11 fidential, unless such confidentiality is expressly
12 waived by the person or entity that created or pro-
13 vided the information.

14 (e) DISCIPLINARY DUTIES OF PUBLIC REGULATORY
15 ORGANIZATION.—The public regulatory organization shall
16 have the following duties and powers:

17 (1) INVESTIGATIONS AND DISCIPLINARY PRO-
18 CEEDINGS.—The public regulatory organization shall
19 establish fair procedures for investigating and dis-
20 ciplining public accounting firms registered with the
21 public regulatory organization, and persons associ-
22 ated with such firms, for violations of the Federal
23 securities laws, the rules or regulations issued there-
24 under, the rules adopted by the public regulatory or-
25 ganization, or professional standards in connection

1 with the preparation of an accountant's report on a
2 financial statement, report, or other document filed
3 with the Commission.

4 (2) INVESTIGATION PROCEDURES.—

5 (A) IN GENERAL.—The public regulatory
6 organization may conduct an investigation of
7 any act, practice, or omission by a public ac-
8 counting firm registered with the public regu-
9 latory organization, or by any person associated
10 with such firm, in connection with the prepara-
11 tion of an accountant's report on a financial
12 statement, report, or other document filed with
13 the Commission that may violate any applicable
14 provision of the Federal securities laws, the
15 rules and regulations issued thereunder, the
16 rules adopted by the public regulatory organiza-
17 tion, or professional standards, whether such
18 act, practice, or omission is the subject of a
19 criminal, civil, or administrative action, or a
20 disciplinary proceeding, or otherwise is brought
21 to the attention of the public regulatory organi-
22 zation.

23 (B) POWERS OF PUBLIC REGULATORY OR-
24 GANIZATION.—For purposes of an investigation
25 under this paragraph, the public regulatory or-

1 ganization may, in addition to such other ac-
2 tions as the public regulatory organization de-
3 termines to be necessary or appropriate—

4 (i) require the testimony of any per-
5 son associated with a public accounting
6 firm registered with the public regulatory
7 organization, with respect to any matter
8 which the public regulatory organization
9 considers relevant or material to the inves-
10 tigation;

11 (ii) require the production of audit
12 workpapers and any other document or in-
13 formation in the possession of a public ac-
14 counting firm registered with the public
15 regulatory organization, or any person as-
16 sociated with such firm, wherever domi-
17 ciled, that the public regulatory organiza-
18 tion considers relevant or material to the
19 investigation, and may examine the books
20 and records of such firm to verify the ac-
21 curacy of any documents or information so
22 supplied; and

23 (iii) request the testimony of any per-
24 son and the production of any document in
25 the possession of any person, including a

1 client of a public accounting firm reg-
2 istered with the public regulatory organiza-
3 tion, that the public regulatory organiza-
4 tion considers relevant or material to the
5 investigation.

6 (C) SUSPENSION OR REVOCATION OF REG-
7 ISTRATION FOR NONCOMPLIANCE.—The refusal
8 of any person associated with a public account-
9 ing firm registered with the public regulatory
10 organization to testify, or the refusal of any
11 such person to produce documents or otherwise
12 cooperate with the public regulatory organiza-
13 tion, in connection with an investigation or
14 hearing under this section, shall be cause for
15 suspending or barring such person from associ-
16 ating with a public accounting firm registered
17 with the public regulatory organization, or such
18 other appropriate sanction authorized by para-
19 graph (3)(B) as the public regulatory organiza-
20 tion shall determine. The refusal of any public
21 accounting firm registered with the public regu-
22 latory organization to produce documents or
23 otherwise cooperate with the public regulatory
24 organization, in connection with an investiga-
25 tion or hearing under this section, shall be

1 cause for the suspension or revocation of the
2 registration of such firm, or such other appro-
3 priate sanction authorized by paragraph (3)(B)
4 as the public regulatory organization shall de-
5 termine.

6 (D) REFERRAL TO COMMISSION.—

7 (i) IN GENERAL.—If the public regu-
8 latory organization is unable to conduct or
9 complete an investigation or hearing under
10 this section because of the refusal of any
11 client of a public accounting firm reg-
12 istered with the public regulatory organiza-
13 tion, or any other person, to testify,
14 produce documents, or otherwise cooperate
15 with the public regulatory organization in
16 connection with such investigation, the
17 public regulatory organization shall report
18 such refusal to the Commission.

19 (ii) INVESTIGATION.—The Commis-
20 sion may designate the public regulatory
21 organization or one or more officers of the
22 public regulatory organization who shall be
23 empowered, in accordance with such proce-
24 dures as the Commission may adopt, to
25 subpoena witnesses, compel their attend-

1 ance, and require the production of any
2 books, papers, correspondence, memo-
3 randa, or other records relevant to any in-
4 vestigation by the public regulatory organi-
5 zation. Attendance of witnesses and the
6 production of any records may be required
7 from any place in the United States or any
8 State at any designated place of hearing.
9 Enforcement of a subpoena issued by the
10 public regulatory organization, or an offi-
11 cer of the public regulatory organization,
12 pursuant to this subparagraph shall occur
13 in the manner provided for in section 21(c)
14 of the Securities Exchange Act of 1934
15 (15 U.S.C. 78u(c)). Examination of wit-
16 nesses subpoenaed pursuant to this sub-
17 paragraph shall be conducted before an of-
18 ficer authorized to administer oaths by the
19 laws of the United States or of the place
20 where the examination is held.

21 (iii) REFERRALS TO COMMISSION.—

22 The public regulatory organization may
23 refer any investigation to the Commission,
24 as the public regulatory organization
25 deems appropriate.

1 (E) IMMUNITY FROM CIVIL LIABILITY.—

2 An employee of the public regulatory organiza-
3 tion engaged in carrying out an investigation or
4 disciplinary proceeding under this section shall
5 be immune from any civil liability arising out of
6 such investigation or disciplinary proceeding in
7 the same manner and to the same extent as an
8 employee of the Federal Government in similar
9 circumstances.

10 (3) DISCIPLINARY PROCEDURES.—

11 (A) DECISION TO DISCIPLINE.—In a pro-
12 ceeding by the public regulatory organization to
13 determine whether a public accounting firm, or
14 a person associated with such firm, should be
15 disciplined, the public regulatory organization
16 shall bring specific charges, notify such firm or
17 person of the charges, give such firm or person
18 an opportunity to defend against such charges,
19 and keep a record of such actions.

20 (B) SANCTIONS.—If the public regulatory
21 organization, after conducting a review and pro-
22 viding an opportunity for a hearing, finds that
23 a public accounting firm, or a person associated
24 with such firm, has engaged in any act, prac-
25 tice, or omission in violation of the Federal se-

1 securities laws, the rules or regulations issued
2 thereunder, the rules adopted by the public reg-
3 ulatory organization, or professional standards,
4 the public regulatory organization may impose
5 such disciplinary sanctions as it deems appro-
6 priate, including—

7 (i) temporary or permanent revocation
8 or suspension of registration under this
9 section;

10 (ii) limitation of activities, functions,
11 and operations;

12 (iii) fine;

13 (iv) censure;

14 (v) in the case of a person associated
15 with a public accounting firm, suspension
16 or bar from being associated with a public
17 accounting firm registered with the public
18 regulatory organization; and

19 (vi) any such other disciplinary sanc-
20 tion or remedial action as the public regu-
21 latory organization has established by rule
22 that the public regulatory organization de-
23 termines to be appropriate to prevent the
24 recurrence of the violation.

1 (C) STATEMENT REQUIRED.—A deter-
2 mination by the public regulatory organization
3 to impose a disciplinary sanction shall be sup-
4 ported by a written statement by the public reg-
5 ulatory organization that shall be made avail-
6 able to the public and that sets forth—

7 (i) any act or practice in which the
8 public accounting firm or person associated
9 with such firm has been found to have en-
10 gaged, or which such firm or person has
11 been found to have omitted;

12 (ii) the specific provision of the Fed-
13 eral securities laws, the rules or regula-
14 tions issued thereunder, the rules adopted
15 by the public regulatory organization, or
16 professional standards which any such act,
17 practice, or omission is deemed to violate;
18 and

19 (iii) the sanction imposed and the rea-
20 sons therefor.

21 (D) PROHIBITION ON ASSOCIATION.—It
22 shall be unlawful—

23 (i) for any person as to whom a sus-
24 pension or bar is in effect willfully to be or
25 to become associated with a public ac-

1 counting firm registered with the public
2 regulatory organization, in connection with
3 the preparation of an accountant's report
4 on any financial statement, report, or other
5 document filed with the Commission, with-
6 out the consent of the public regulatory or-
7 ganization or the Commission; and

8 (ii) for any public accounting firm
9 registered with the public regulatory orga-
10 nization to permit such a person to be-
11 come, or remain, associated with such firm
12 without the consent of the public regu-
13 latory organization or the Commission, if
14 such firm knew or, in the exercise of rea-
15 sonable care should have known, of such
16 suspension or bar.

17 (4) REPORTING OF SANCTIONS.—If the public
18 regulatory organization imposes a disciplinary sanc-
19 tion against a public accounting firm, or a person
20 associated with such firm, the public regulatory or-
21 ganization shall report such sanction to the Commis-
22 sion, to the appropriate State or foreign licensing
23 public regulatory organization or public regulatory
24 organizations with which such firm or such person
25 is licensed or certified to practice public accounting,

1 and to the public. The information reported shall
2 include—

3 (A) the name of the public accounting
4 firm, or person associated with such firm,
5 against whom the sanction is imposed;

6 (B) a description of the acts, practices, or
7 omissions upon which the sanction is based;

8 (C) the nature of the sanction; and

9 (D) such other information respecting the
10 circumstances of the disciplinary action (includ-
11 ing the name of any client of such firm affected
12 by such acts, practices, or omissions) as the
13 public regulatory organization deems appro-
14 priate.

15 (5) DISCOVERY AND ADMISSIBILITY OF PUBLIC
16 REGULATORY ORGANIZATION MATERIAL.—

17 (A) DISCOVERABILITY.—

18 (i) IN GENERAL.—Except as provided
19 in subparagraph (C), all reports, memo-
20 randa, and other information prepared,
21 collected, or received by the public regu-
22 latory organization, and the deliberations
23 and other proceedings of the public regu-
24 latory organization and its employees and
25 agents in connection with an investigation

1 or disciplinary proceeding under this sec-
2 tion shall not be subject to any form of
3 civil discovery, including demands for pro-
4 duction of documents and for testimony of
5 individuals, in connection with any pro-
6 ceeding in any State or Federal court, or
7 before any State or Federal administrative
8 agency. This subparagraph shall not apply
9 to any information provided to the public
10 regulatory organization that would have
11 been subject to discovery from the person
12 or entity that provided it to the public reg-
13 ulatory organization, but is no longer avail-
14 able from that person or entity.

15 (ii) EXEMPTION.—Submissions to the
16 public regulatory organization by or on be-
17 half of a public accounting firm or person
18 associated with such a firm or on behalf of
19 any other participant in a public regulatory
20 organization proceeding (other than a pub-
21 lic hearing), including documents gen-
22 erated by the public regulatory organiza-
23 tion itself, shall be exempt from discovery
24 to the same extent as the material de-
25 scribed in clause (i), whether in the posses-

1 sion of the public regulatory organization
2 or any other person, if such submission—

3 (I) is prepared specifically for the
4 purpose of the public regulatory orga-
5 nization proceeding; and

6 (II) addresses the merits of the
7 issues under investigation by the pub-
8 lic regulatory organization.

9 (iii) HEARINGS PUBLIC.—Except as
10 otherwise ordered by the public regulatory
11 organization on its own motion or on the
12 motion of a party, all hearings under this
13 paragraph shall be open to the public.

14 (B) ADMISSIBILITY.—

15 (i) IN GENERAL.—Except as provided
16 in subparagraph (C), all reports, memo-
17 randa, and other information prepared,
18 collected, or received by the public regu-
19 latory organization, the deliberations and
20 other proceedings of the public regulatory
21 organization and its employees and agents
22 in connection with an investigation or dis-
23 ciplinary proceeding under this section, the
24 fact that an investigation or disciplinary
25 proceeding has been commenced, and the

1 public regulatory organization's determina-
2 tion with respect to any investigation or
3 disciplinary proceeding shall be inadmis-
4 sible in any proceeding in any State or
5 Federal court or before any State or Fed-
6 eral administrative agency.

7 (ii) TREATMENT OF CERTAIN DOCU-
8 MENTS.—Submissions to the public regu-
9 latory organization by or on behalf of a
10 public accounting firm or person associated
11 with such a firm or on behalf of any other
12 participant in a public regulatory organiza-
13 tion proceeding, including documents gen-
14 erated by the public regulatory organiza-
15 tion itself, shall be inadmissible to the
16 same extent as the material described in
17 clause (i), if such submission—

18 (I) is prepared specifically for the
19 purpose of the public regulatory orga-
20 nization proceedings; and

21 (II) addresses the merits of the
22 issues under investigation by the pub-
23 lic regulatory organization.

24 (C) AVAILABILITY AND ADMISSIBILITY OF
25 INFORMATION.—

1 (i) IN GENERAL.—All information re-
2 ferred to in subparagraphs (A) and (B)
3 shall be—

4 (I) available to the Commission;

5 (II) available to any other Fed-
6 eral department or agency in connec-
7 tion with the exercise of its regulatory
8 authority to the extent that such in-
9 formation would be available to such
10 agency from the Commission as a re-
11 sult of a Commission enforcement in-
12 vestigation;

13 (III) available to Federal and
14 State authorities in connection with
15 any criminal investigation or pro-
16 ceeding;

17 (IV) admissible in any action
18 brought by the Commission or any
19 other Federal department or agency
20 pursuant to its regulatory authority,
21 to the extent that such information
22 would be available to such agency
23 from the Commission as a result of a
24 Commission enforcement investigation
25 and in any criminal action; and

1 (V) available to State licensing
2 public regulatory organizations to the
3 extent authorized in paragraph (6).

4 (ii) OTHER LIMITATIONS.—Any docu-
5 ments or other information provided to the
6 Commission or other authorities pursuant
7 to clause (i) shall be subject to the limita-
8 tions on discovery and admissibility set
9 forth in subparagraphs (A) and (B).

10 (6) PARTICIPATION BY STATE LICENSING PUB-
11 LIC REGULATORY ORGANIZATIONS.—

12 (A) NOTICE.—When the public regulatory
13 organization institutes an investigation pursu-
14 ant to paragraph (2)(A), it shall notify the
15 State licensing public regulatory organizations
16 in the States in which the public accounting
17 firm or person associated with such firm en-
18 gaged in the act or failure to act alleged to have
19 violated professional standards, of the pendency
20 of the investigation, and shall invite the State
21 licensing public regulatory organizations to par-
22 ticipate in the investigation.

23 (B) ACCEPTANCE BY STATE PUBLIC REGU-
24 LATORY ORGANIZATION.—If a State licensing
25 public regulatory organization elects to join in

1 the investigation, its representatives shall par-
2 ticipate, pursuant to rules established by the
3 public regulatory organization, in investigating
4 the matter and in presenting the evidence justi-
5 fying the charges in any hearing pursuant to
6 paragraph (3)(A).

7 (C) STATE SANCTIONS PERMITTED.—If
8 the public regulatory organization or the Com-
9 mission imposes a sanction upon a public ac-
10 counting firm or person associated with such a
11 firm, and that determination either is not sub-
12 jected to judicial review or is upheld on judicial
13 review, a State licensing public regulatory orga-
14 nization may impose a sanction on the basis of
15 the public regulatory organization's report pur-
16 suant to paragraph (4). Any sanction imposed
17 by the State licensing public regulatory organi-
18 zation under this clause shall be inadmissible in
19 any proceeding in any State or Federal court or
20 before any State or Federal administrative
21 agency.

22 (f) REVIEW AND APPROVAL OF RULES.—

23 (1) SUBMISSION, PUBLICATION, AND COM-
24 MENT.—Each recognized public regulatory organiza-
25 tion shall file with the Commission, in accordance

1 with such rules as the Commission may prescribe,
2 copies of any proposed rule or any proposed change
3 in, addition to, or deletion from the rules of such
4 recognized public regulatory organization (herein-
5 after in this subsection collectively referred to as a
6 “proposed rule change”) accompanied by a concise
7 general statement of the basis and purpose of such
8 proposed rule change. The Commission shall, upon
9 the filing of any proposed rule change, publish notice
10 thereof together with the terms of substance of the
11 proposed rule change or a description of the subjects
12 and issues involved. The Commission shall give in-
13 terested persons an opportunity to submit written
14 data, views, and arguments concerning such pro-
15 posed rule change. No proposed rule change shall
16 take effect unless approved by the Commission or
17 otherwise permitted in accordance with the provi-
18 sions of this subsection.

19 (2) APPROVAL OR PROCEEDINGS.—Within 35
20 days of the date of publication of notice of the filing
21 of a proposed rule change in accordance with para-
22 graph (1) of this subsection, or within such longer
23 period as the Commission may designate up to 90
24 days of such date if it finds such longer period to
25 be appropriate and publishes its reasons for so find-

1 ing or as to which the recognized public regulatory
2 organization consents, the Commission shall—

3 (A) by order approve such proposed rule
4 change; or

5 (B) institute proceedings to determine
6 whether the proposed rule change should be dis-
7 approved. Such proceedings shall include notice
8 of the grounds for disapproval under consider-
9 ation and opportunity for hearing and be con-
10 cluded within 180 days of the date of publica-
11 tion of notice of the filing of the proposed rule
12 change. At the conclusion of such proceedings
13 the Commission, by order, shall approve or dis-
14 approve such proposed rule change. The Com-
15 mission may extend the time for conclusion of
16 such proceedings for up to 60 days if it finds
17 good cause for such extension and publishes its
18 reasons for so finding or for such longer period
19 as to which the recognized public regulatory or-
20 ganization consents.

21 (3) BASIS FOR APPROVAL OR DISAPPROVAL.—

22 The Commission shall approve a proposed rule
23 change of a recognized public regulatory organiza-
24 tion if it finds that such proposed rule change is
25 consistent with the requirements of this title and the

1 rules and regulations thereunder applicable to such
2 organization. The Commission shall disapprove a
3 proposed rule change of a recognized public regu-
4 latory organization if it does not make such finding.
5 The Commission shall not approve any proposed rule
6 change prior to the 30th day after the date of publi-
7 cation of notice of the filing thereof, unless the Com-
8 mission finds good cause for so doing and publishes
9 its reasons for so finding.

10 (4) RULES EFFECTIVE UPON FILING.—

11 (A) Notwithstanding the provisions of
12 paragraph (2) of this subsection, a proposed
13 rule change may take effect upon filing with the
14 Commission if designated by the recognized
15 public regulatory organization as (i) consti-
16 tuting a stated policy, practice, or interpreta-
17 tion with respect to the meaning, administra-
18 tion, or enforcement of an existing rule of the
19 recognized public regulatory organization, (ii)
20 establishing or changing a due, fee, or other
21 charge imposed by the recognized public regu-
22 latory organization, or (iii) concerned solely
23 with the administration of the recognized public
24 regulatory organization or other matters which
25 the Commission, by rule, consistent with the

1 public interest and the purposes of this sub-
2 section, may specify as outside the provisions of
3 such paragraph (2).

4 (B) Notwithstanding any other provision of
5 this subsection, a proposed rule change may be
6 put into effect summarily if it appears to the
7 Commission that such action is necessary for
8 the protection of investors, or otherwise in ac-
9 cordance with the purposes of this title. Any
10 proposed rule change so put into effect shall be
11 filed promptly thereafter in accordance with the
12 provisions of paragraph (1) of this subsection.

13 (C) Any proposed rule change of a recog-
14 nized public regulatory organization which has
15 taken effect pursuant to subparagraph (A) or
16 (B) of this paragraph may be enforced by such
17 organization to the extent it is not inconsistent
18 with the provisions of this title, the securities
19 laws, the rules and regulations thereunder, and
20 applicable Federal and State law. At any time
21 within 60 days of the date of filing of such a
22 proposed rule change in accordance with the
23 provisions of paragraph (1) of this subsection,
24 the Commission summarily may abrogate the
25 change in the rules of the recognized public reg-

1 ulatory organization made thereby and require
2 that the proposed rule change be refiled in ac-
3 cordance with the provisions of paragraph (1)
4 of this subsection and reviewed in accordance
5 with the provisions of paragraph (2) of this
6 subsection, if it appears to the Commission that
7 such action is necessary or appropriate in the
8 public interest, for the protection of investors,
9 or otherwise in furtherance of the purposes of
10 this title. Commission action pursuant to the
11 preceding sentence shall not affect the validity
12 or force of the rule change during the period it
13 was in effect, shall not be subject to court re-
14 view, and shall not be deemed to be “final agen-
15 cy action” for purposes of section 704 of title
16 5, United States Code.

17 (g) COMMISSION ACTION TO CHANGE RULES.—The
18 Commission, by rule, may abrogate, add to, and delete
19 from (hereinafter in this subsection collectively referred to
20 as “amend”) the rules of a recognized public regulatory
21 organization as the Commission deems necessary or ap-
22 propriate to insure the fair administration of the recog-
23 nized public regulatory organization, to conform its rules
24 to requirements of this title, the securities laws, and the
25 rules and regulations thereunder applicable to such orga-

1 nization, or otherwise in furtherance of the purposes of
2 this title, in the following manner:

3 (1) The Commission shall notify the recognized
4 public regulatory organization and publish notice of
5 the proposed rulemaking in the Federal Register.
6 The notice shall include the text of the proposed
7 amendment to the rules of the recognized public reg-
8 ulatory organization and a statement of the Com-
9 mission's reasons, including any pertinent facts, for
10 commencing such proposed rulemaking.

11 (2) The Commission shall give interested per-
12 sons an opportunity for the oral presentation of
13 data, views, and arguments, in addition to an oppor-
14 tunity to make written submissions. A transcript
15 shall be kept of any oral presentation.

16 (3) A rule adopted pursuant to this subsection
17 shall incorporate the text of the amendment to the
18 rules of the recognized public regulatory organiza-
19 tion and a statement of the Commission's basis for
20 and purpose in so amending such rules. This state-
21 ment shall include an identification of any facts on
22 which the Commission considers its determination so
23 to amend the rules of the recognized public regu-
24 latory agency to be based, including the reasons for

1 the Commission's conclusions as to any of such facts
2 which were disputed in the rulemaking.

3 (4)(A) Except as provided in paragraphs (1)
4 through (3) of this subsection, rulemaking under
5 this subsection shall be in accordance with the pro-
6 cedures specified in section 553 of title 5, United
7 States Code, for rulemaking not on the record.

8 (B) Nothing in this subsection shall be con-
9 strued to impair or limit the Commission's power to
10 make, or to modify or alter the procedures the Com-
11 mission may follow in making, rules and regulations
12 pursuant to any other authority under the securities
13 laws.

14 (C) Any amendment to the rules of a recog-
15 nized public regulatory organization made by the
16 Commission pursuant to this subsection shall be con-
17 sidered for all purposes to be part of the rules of
18 such recognized public regulatory organization and
19 shall not be considered to be a rule of the Commis-
20 sion.

21 (h) COMMISSION OVERSIGHT OF THE PRO.—

22 (1) RECORDS AND EXAMINATIONS.—A public
23 regulatory organization shall make and keep for pre-
24 scribed periods such records, furnish such copies
25 thereof, and make and disseminate such reports as

1 the Commission, by rule, prescribes as necessary or
2 appropriate in the public interest, for the protection
3 of investors, or otherwise in furtherance of the pur-
4 poses of this title or the securities laws.

5 (2) ADDITIONAL DUTIES; SPECIAL REVIEWS.—

6 A public regulatory organization shall perform such
7 other duties or functions as the Commission, by rule
8 or order, determines are necessary or appropriate in
9 the public interest or for the protection of investors
10 and to carry out the purposes of this title and the
11 securities laws, including conducting a special review
12 of a particular public accounting firm's quality con-
13 trol system or a special review of a particular aspect
14 of some or all public accounting firms' quality con-
15 trol systems.

16 (3) ANNUAL REPORT; PROPOSED BUDGET.—

17 (A) SUBMISSION OF ANNUAL REPORT AND

18 BUDGET.—A public regulatory organization
19 shall submit an annual report and its proposed
20 budget to the Commission for review and ap-
21 proval, by order, at such times and in such
22 form as the Commission shall prescribe.

23 (B) CONTENTS OF ANNUAL REPORT.—

24 Each annual report required by subparagraph

25 (A) shall include—

- 1 (i) a detailed description of the activi-
2 ties of the public regulatory organization;
3 (ii) the audited financial statements of
4 the public regulatory organization;
5 (iii) a detailed explanation of the fees
6 and charges imposed by the public regu-
7 latory organization under subsection
8 (b)(9); and
9 (iv) such other matters as the public
10 regulatory organization or the Commission
11 deems appropriate.

12 (C) TRANSMITTAL OF ANNUAL REPORT TO
13 CONGRESS.—The Commission shall transmit
14 each approved annual report received under
15 subparagraph (A) to the Committee on Finan-
16 cial Services of the United States House of
17 Representatives and the Committee on Bank-
18 ing, Housing, and Urban Affairs of the United
19 States Senate. At the same time it transmits a
20 public regulatory organization’s annual report
21 under this subparagraph, the Commission shall
22 include a written statement of its views of the
23 functioning and operations of the public regu-
24 latory organization.

1 (D) PUBLIC AVAILABILITY.—Following
2 transmittal of each approved annual report
3 under subparagraph (C), the Commission and
4 the public regulatory organization shall make
5 the approved annual report publicly available.

6 (4) DISAPPROVAL OF ELECTION OF PRO MEM-
7 BER.—The Commission is authorized, by order, if in
8 its opinion such action is necessary or appropriate in
9 the public interest, for the protection of investors, or
10 otherwise in furtherance of the purposes of this title
11 or the securities laws, to disapprove the election of
12 any member of a public regulatory organization if
13 the Commission determines, after notice and oppor-
14 tunity for hearing, that the person elected is unfit
15 to serve on the public regulatory organization.

16 (i) CLARIFICATION OF APPLICATION OF PRO AU-
17 THORITY.—The authority granted to any such organiza-
18 tion in this section shall only apply to the actions of ac-
19 countants related to the certification of financial state-
20 ments required by securities laws and not other actions
21 or actions for other clients of the accounting firm or any
22 accountant that does not certify financial statements for
23 publicly traded companies.

24 (j) DEADLINE FOR RULEMAKING.—The Commission
25 shall—

1 (1) within 90 days after the date of enactment
2 of this Act, propose, and

3 (2) within 270 days after such date, prescribe,
4 rules to implement this section.

5 (k) EFFECTIVE DATE; TRANSITION PROVISIONS.—

6 (1) EFFECTIVE DATE.—Except as provided in
7 paragraph (2), subsection (a) of this section shall be
8 effective with respect to any certified financial state-
9 ment for any fiscal year that ends more than one
10 year after the Commission recognizes a public regu-
11 latory organization pursuant to this section.

12 (2) DELAY IN ESTABLISHMENT OF BOARD.—If
13 the Commission has failed to recognize any public
14 regulatory organization pursuant to this section
15 within one year after the date of enactment of this
16 Act, the Commission shall perform the duties of
17 such organization with respect to any certified finan-
18 cial statement for any fiscal year that ends before
19 one year after any such board is recognized by the
20 Commission.

21 **SEC. 422. IMPROPER INFLUENCE ON CONDUCT OF AUDITS.**

22 (a) RULES TO PROHIBIT.—It shall be unlawful in
23 contravention of such rules or regulations as the Commis-
24 sion shall prescribe as necessary and appropriate in the
25 public interest or for the protection of investors for any

1 officer, director, or affiliated person of an issuer of any
2 security registered under section 12 of the Securities Ex-
3 change Act of 1934 (15 U.S.C. 78l) to take any action
4 to fraudulently influence, coerce, manipulate, or mislead
5 any independent public or certified accountant engaged in
6 the performance of an audit of the financial statements
7 of such issuer for the purpose of rendering such financial
8 statements materially misleading. In any civil proceeding,
9 the Commission shall have exclusive authority to enforce
10 this section and any rule or regulation hereunder.

11 (b) NO PREEMPTION OF OTHER LAW.—The provi-
12 sions of subsection (a) shall be in addition to, and shall
13 not supersede or preempt, any other provision of law or
14 any rule or regulation thereunder.

15 (c) DEADLINE FOR RULEMAKING.—The Commission
16 shall—

17 (1) within 90 days after the date of enactment
18 of this Act, propose, and

19 (2) within 270 days after such date, prescribe,
20 the rules or regulations required by this section.

21 **SEC. 423. ENHANCED OVERSIGHT OF PERIODIC DISCLO-**
22 **SURES BY ISSUERS.**

23 (a) REGULAR AND SYSTEMATIC REVIEW.—The Secu-
24 rities and Exchange Commission shall review disclosures
25 made by issuers pursuant to the Securities Exchange Act

1 of 1934 (including reports filed on form 10-K) on a basis
2 that is more regular and systematic than that in practice
3 on the date of enactment on this Act. Such review shall
4 include a review of an issuer's financial statements.

5 (b) RISK RATING SYSTEM.—For purposes of the re-
6 views required by subsection (a), the Commission shall es-
7 tablish a risk rating system whereby issuers receive a risk
8 rating by the Commission, which shall be used to deter-
9 mine the frequency of such reviews. In designing such a
10 risk rating system the Commission shall consider, among
11 other factors the following:

12 (1) Emerging companies with disparities in
13 price to earning ratios.

14 (2) Issuers with the largest market capitaliza-
15 tion.

16 (3) Issuers whose operations significantly im-
17 pact any material sector of the economy.

18 (4) Systemic factors such as the effect on niche
19 markets or important subsectors of the economy.

20 (5) Issuers that experience significant volatility
21 in their stock price as compared to other issuers.

22 (6) Any other factor the Commission may con-
23 sider relevant.

1 (c) MINIMUM REVIEW PERIOD.—In no event shall an
2 issuer be reviewed less than once every three years by the
3 Commission.

4 (d) PROHIBITION OF DISCLOSURE OF RISK RAT-
5 ING.—Notwithstanding any other provision of law, the
6 Commission shall not disclose the risk rating of any issuer
7 described in subsection (b).

8 **SEC. 424. RETENTION OF RECORDS.**

9 (a) DUTY TO RETAIN RECORDS.—Any independent
10 public or certified accountant who certifies a financial
11 statement as required by the securities laws or any rule
12 or regulation thereunder shall prepare and maintain for
13 a period of no less than 7 years, final audit work papers
14 and other information related to any accountants report
15 on such financial statements in sufficient detail to support
16 the opinion or assertion reached in such accountants re-
17 port. The Commission may prescribe rules specifying the
18 application and requirements of this section.

19 (b) ACCOUNTANT’S REPORT.—For purposes of sub-
20 section (a), the term “accountant’s report” means a docu-
21 ment in which an accountant identifies a financial state-
22 ment and sets forth his opinion regarding such financial
23 statement or an assertion that an opinion cannot be ex-
24 pressed.

1 **SEC. 425. AUTHORIZATION OF APPROPRIATIONS OF THE**
2 **SECURITIES AND EXCHANGE COMMISSION.**

3 In addition to any other funds authorized to be ap-
4 propriated to the Securities and Exchange Commission,
5 there are authorized to be appropriated to carry out the
6 functions, powers, and duties of the Commission,
7 \$776,000,000 for fiscal year 2003, of which—

8 (1) not less than \$134,000,000 shall be avail-
9 able for the Division of Corporate Finance and for
10 the Office of Chief Accountant;

11 (2) not less than \$326,000,000 shall be avail-
12 able for the Division of Enforcement; and

13 (3) not less than \$76,000,000 shall be available
14 to implement section 8 of the Investor and Capital
15 Markets Fee Relief Act, relating to pay com-
16 parability.

17 **SEC. 426. ENFORCEMENT OF AUDIT COMMITTEE GOVERN-**
18 **ANCE PRACTICES.**

19 The Commission shall revise its regulations per-
20 taining to auditor independence to require that an ac-
21 countant shall not be considered to be independent for
22 purposes of certifying the financial statements or other
23 documents of an issuer required to be filed with the Com-
24 mission under the securities laws unless—

25 (1) an issuer's auditor is appointed by and re-
26 ports directly to the audit committee of the board of

1 directors or, in the absence of an audit committee,
2 the board committee performing equivalent functions
3 or the entire board of directors;

4 (2) the audit committee meets with the ac-
5 countants engaged to perform such audit on a reg-
6 ular basis, at least quarterly; and

7 (3) the audit committee is provided with the op-
8 portunity to meet with such accountants without the
9 attendance at such meetings of any officer, director,
10 or other member of the issuer's senior management.

11 **SEC. 427. REVIEW OF CORPORATE GOVERNANCE PRAC-**
12 **TICES.**

13 (a) STUDY OF CORPORATE PRACTICES.—The Com-
14 mission shall conduct a study and review of current cor-
15 porate governance standards and practices to determine
16 whether such standards and practices are serving the best
17 interests of shareholders. Such study and review shall in-
18 clude an analysis of—

19 (1) whether current standards and practices
20 promote full disclosure of relevant information to
21 shareholders;

22 (2) whether corporate codes of ethics are ade-
23 quate to protect shareholders, and to what extent
24 deviations from such codes are tolerated;

1 (3) to what extent conflicts of interests are ag-
2 gressively reviewed, and whether adequate means for
3 redressing such conflicts exist;

4 (4) to what extent sufficient legal protections
5 exist or should be adopted to ensure that any man-
6 ager who attempts to manipulate or unduly influence
7 an audit will be subject to appropriate sanction and
8 liability, including liability to investors or share-
9 holders pursuing a private cause of action for such
10 manipulation or undue influence;

11 (5) whether rules, standards, and practices re-
12 lating to determining whether independent directors
13 are in fact independent are adequate;

14 (6) whether rules, standards, and practices re-
15 lating to the independence of directors serving on
16 audit committees are uniformly applied and ade-
17 quate to protect investor interests; and

18 (7) what further or additional practices or
19 standards might best protect investors and promote
20 the interests of shareholders.

21 (b) PARTICIPATION OF STATE REGULATORS.—In
22 conducting the study required under subsection (a), the
23 Commission shall seek the views of the securities and cor-
24 porate regulators of the various States.

1 (c) REPORT REQUIRED.—The Commission shall sub-
2 mit a report on the analysis required under subsection (a)
3 as a part of the Commission’s next annual report sub-
4 mitted after the date of enactment of this Act.

5 **SEC. 428. STUDY OF ENFORCEMENT ACTIONS.**

6 (a) STUDY REQUIRED.—The Commission shall re-
7 view and analyze all enforcement actions by the Commis-
8 sion involving violations of reporting requirements im-
9 posed under the securities laws, and restatements of finan-
10 cial statements, over the last five years to identify areas
11 of reporting that are most susceptible to fraud, inappro-
12 priate manipulation, or inappropriate earnings manage-
13 ment, such as revenue recognition and the accounting
14 treatment of off-balance sheet special purpose entities.

15 (b) REPORT REQUIRED.—The Commission shall re-
16 port its findings to the Committee on Financial Services
17 of the House of Representatives and the Committee on
18 Banking, Housing, and Urban Affairs of the Senate with-
19 in 180 days of the date of enactment of this Act and shall
20 use such findings to revise its rules and regulations, as
21 necessary. The report shall include a discussion of regu-
22 latory or legislative steps that are recommended or that
23 may be necessary to address concerns identified in the
24 study.

1 **SEC. 429. STUDY OF CREDIT RATING AGENCIES.**

2 (a) STUDY REQUIRED.—The Commission shall con-
3 duct a study of the role and function of credit rating agen-
4 cies in the operation of the securities market. Such study
5 shall examine—

6 (1) the role of the credit rating agencies in the
7 evaluation of issuers of securities;

8 (2) the importance of that role to investors and
9 the functioning of the securities markets;

10 (3) any impediments to the accurate appraisal
11 by credit rating agencies of the financial resources
12 and risks of issuers of securities;

13 (4) any measures which may be required to im-
14 prove the dissemination of information concerning
15 such resources and risks when credit rating agencies
16 announce credit ratings;

17 (5) any barriers to entry into the business of
18 acting as a credit rating agency, and any measures
19 needed to remove such barriers; and

20 (6) any conflicts of interest in the operation of
21 credit rating agencies and measures to prevent such
22 conflicts or ameliorate the consequences of such con-
23 flicts.

24 (b) REPORT REQUIRED.—The Commission shall sub-
25 mit a report on the analysis required by subsection (a)
26 to the President, the Committee on Financial Services of

1 the House of Representatives, and the Committee on
2 Banking, Housing, and Urban Affairs of the Senate with-
3 in 180 days after the date of enactment of this Act. The
4 report shall include a discussion of regulatory or legislative
5 steps that are recommended or that may be necessary to
6 address concerns identified in the study.

7 **SEC. 430. STUDY OF INVESTMENT BANKS**

8 (a) GAO STUDY.—The Comptroller General shall
9 conduct a study on whether investment banks and finan-
10 cial advisors assisted public companies in manipulating
11 their earnings and obfuscating their true financial condi-
12 tion. The study should address the role of the investment
13 banks—

14 (1) in the collapse of the Enron Corporation,
15 including with respect to the design and implementa-
16 tion of derivatives transactions, transactions involv-
17 ing special purpose vehicles, and other financing ar-
18 rangements that may have had the effect of altering
19 the company's reported financial statements in ways
20 that obscured the true financial picture of the com-
21 pany;

22 (2) in the failure of Global Crossing, including
23 with respect to transactions involving swaps of fiber
24 optic cable capacity, in designing transactions that
25 may have had the effect of altering the company's

1 reported financial statements in ways that obscured
2 the true financial picture of the company; and

3 (3) generally, in creating and marketing trans-
4 actions which may have been designed solely to en-
5 able companies to manipulate revenue streams, ob-
6 tain loans, or move liabilities off balance sheets with-
7 out altering the economic and business risks faced
8 by the companies or any other mechanism to obscure
9 a company's financial picture.

10 (b) REPORT.—The General Accounting Office shall
11 report to the Congress within 180 days after the date of
12 enactment of this Act on the results of the study required
13 by this section. The report shall include a discussion of
14 regulatory or legislative steps that are recommended or
15 that may be necessary to address concerns identified in
16 the study.

17 **SEC. 431. STUDY OF MODEL RULES FOR ATTORNEYS OF**
18 **ISSUERS.**

19 (a) IN GENERAL.—The Comptroller General shall
20 conduct a study of the Model Rules of Professional Con-
21 duct promulgated by the American Bar Association and
22 rules of professional conduct applicable to attorneys estab-
23 lished by the Commission to determine—

24 (1) whether such rules provide sufficient guid-
25 ance to attorneys representing corporate clients who

1 are issuers required to file periodic disclosures under
2 section 13 or 15 of the Securities Exchange Act of
3 1934 (15 U.S.C. 78m, 78o), as to the ethical re-
4 sponsibilities of such attorneys to—

5 (A) warn clients of possible fraudulent or
6 illegal activities of such clients and possible con-
7 sequences of such activities;

8 (B) disclose such fraudulent or illegal ac-
9 tivities to appropriate regulatory or law enforce-
10 ment authorities; and

11 (C) manage potential conflicts of interests
12 with clients; and

13 (2) whether such rules provide sufficient protec-
14 tion to corporate shareholders, especially with re-
15 gards to conflicts of interest between attorneys and
16 their corporate clients.

17 (b) REPORT REQUIRED.—The Comptroller General
18 shall report to the Committee on Financial Services of the
19 House of Representatives and the Committee on Banking,
20 Housing, and Urban Affairs of the Senate on the results
21 of the study required by this section. Such report shall
22 include any recommendations of the General Accounting
23 Office with regards to—

24 (1) possible changes to the Model Rules and the
25 rules of professional conduct applicable to attorneys

1 established by the Commission to provide increased
2 protection to shareholders;

3 (2) whether restrictions should be imposed to
4 require that an attorney, having represented a cor-
5 poration or having been employed by a firm which
6 represented a corporation, may not be employed as
7 general counsel to that corporation until a certain
8 period of time has expired; and

9 (3) regulatory or legislative steps that are rec-
10 ommended or that may be necessary to address con-
11 cerns identified in the study.

12 **Subtitle C—General Provisions**

13 **SEC. 441. ENFORCEMENT AUTHORITY.**

14 (a) REGULATORY ACTION.—The Commission shall
15 promulgate such rules and regulations, as may be nec-
16 essary or appropriate in the public interest or for the pro-
17 tection of investors, and in furtherance of this title.

18 (b) ENFORCEMENT.—

19 (1) IN GENERAL.—A violation by any person of
20 this title, any rule or regulation of the Commission
21 issued under this title, or any rule of the public reg-
22 ulatory organization established under section 421,
23 shall be treated for all purposes in the same manner
24 as a violation of the Securities Exchange Act of
25 1934 (15 U.S.C. 78a et seq.) or the rules and regu-

1 lations issued thereunder, consistent with the provi-
2 sions of this title, and any such person shall be sub-
3 ject to the same penalties, and to the same extent,
4 as for a violation of that Act or such rules or regula-
5 tions.

6 (2) INVESTIGATIONS, INJUNCTIONS, AND PROS-
7 ECUTION OF OFFENSES.—Section 21 of the Securi-
8 ties Exchange Act of 1934 (15 U.S.C. 78u) is
9 amended

10 (A) in subsection (a)(1), by inserting “the
11 rules of the public regulatory organization es-
12 tablished under section 421 of the Investors’
13 and Employees’ Bill of Rights Act of 2002, of
14 which such person is a registered public ac-
15 counting firm or a person associated with such
16 a firm,” after “is a participant,”;

17 (B) in subsection (d)(1), by inserting “the
18 rules of the public regulatory organization es-
19 tablished under section 421 of the Investors’
20 and Employees’ Bill of Rights Act of 2002, of
21 which such person is a registered public ac-
22 counting firm or a person associated with such
23 a firm,” after “is a participant,”;

24 (C) in subsection (e), by inserting “the
25 rules of the public regulatory organization es-

1 tablished under section 421 of the Investors’
2 and Employees’ Bill of Rights Act of 2002, of
3 which such person is a registered public ac-
4 counting firm or a person associated with such
5 a firm,” after “is a participant,”; and

6 (D) in subsection (f), by inserting “the
7 public regulatory organization established under
8 section 421 of the Investors’ and Employees’
9 Bill of Rights Act of 2002” after “self-regu-
10 latory organization” each place that term ap-
11 pears.

12 (3) CEASE-AND-DESIST PROCEEDINGS.—Section
13 21C(c)(2) of the Securities Exchange Act of 1934
14 (15 U.S.C. 78u–3(c)(2)) is amended by inserting
15 “registered public accounting firm (under section
16 421(d) of the Investors’ and Employees’ Bill of
17 Rights Act of 2002),” after “government securities
18 dealer,”.

19 (c) EFFECT ON COMMISSION AUTHORITY.—Nothing
20 in this title or the rules of the public regulatory organiza-
21 tion established under section 421 shall be construed to
22 impair or limit—

23 (1) the authority of the Commission to regulate
24 the accounting profession, accounting firms, or per-

1 sons associated with such firms for purposes of en-
2 forcement of the securities laws;

3 (2) the authority of the Commission to set
4 standards for accounting or auditing practices or
5 auditor independence, derived from other provisions
6 of the securities laws or the rules or regulations
7 thereunder, for purposes of the preparation and
8 issuance of any audit report, or otherwise under ap-
9 plicable law; or

10 (3) the ability of the Commission to take, on
11 the initiative of the Commission, legal, administra-
12 tive, or disciplinary action against any registered
13 public accounting firm or any associated person
14 thereof.

15 **SEC. 442. EXCLUSION FOR INVESTMENT COMPANIES.**

16 Sections 401, 402, 403, 405, and 421 of this title
17 shall not apply to an investment company registered under
18 section 8 of the Investment Company Act of 1940 (15
19 U.S.C. 80a–8).

20 **SEC. 443. DEFINITIONS.**

21 As used in this title:

22 (1) **BLACKOUT PERIOD.**—The term “blackout
23 period” with respect to the equity securities of any
24 issuer—

1 (A) means any period during which the
2 ability of at least fifty percent of the partici-
3 pants or beneficiaries under all applicable indi-
4 vidual account plans maintained by the issuer
5 to purchase (or otherwise acquire) or sell (or
6 otherwise transfer) an interest in any equity of
7 such issuer is suspended by the issuer or a fidu-
8 ciary of the plan; but

9 (B) does not include—

10 (i) a period in which the employees of
11 an issuer may not allocate their interests
12 in the individual account plan due to an
13 express investment restriction—

14 (I) incorporated into the indi-
15 vidual account plan; and

16 (II) timely disclosed to employees
17 before joining the individual account
18 plan or as a subsequent amendment
19 to the plan; or

20 (ii) any suspension described in sub-
21 paragraph (A) that is imposed solely in
22 connection with persons becoming partici-
23 pants or beneficiaries, or ceasing to be par-
24 ticipants or beneficiaries, in an applicable
25 individual account plan by reason of a cor-

porate merger, acquisition, divestiture, or similar transaction.

(2) BOARDS OF ACCOUNTANCY OF THE STATES.—The term “boards of accountancy of the States” means any organization or association chartered or approved under the law of any State with responsibility for the registration, supervision, or regulation of accountants.

(3) COMMISSION.—The term “Commission” means the Securities and Exchange Commission.

(4) INDIVIDUAL ACCOUNT PLAN.—The term “individual account plan” has the meaning provided such term in section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34)).

(5) ISSUER.—The term “issuer” shall have the meaning set forth in section 2(a)(4) of the Securities Act of 1933 (15 U.S.C. 77b(a)(4)).

(6) PERSON ASSOCIATED WITH AN ACCOUNTANT.—The term “person associated with an accountant” means any partner, officer, director, or manager of such accountant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such

1 accountant, or any employee of such accountant who
 2 performs a supervisory role in the auditing process.

3 (7) PUBLIC REGULATORY ORGANIZATION.—The
 4 term “public regulatory organization” means the
 5 public regulatory organization established by the
 6 Commission under subsection (b) of section 421.

7 (8) SECURITIES LAWS.—The term “securities
 8 laws” means the Securities Act of 1933 (15 U.S.C.
 9 77a et seq.), the Securities Exchange Act of 1934
 10 (15 U.S.C. 78a et seq.), the Trust Indenture Act of
 11 1939 (15 U.S.C. 77aaa et seq.), the Investment
 12 Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the
 13 Investment Advisers Act of 1940 (15 U.S.C. 80b et
 14 seq.), and the Securities Investor Protection Act of
 15 1970 (15 U.S.C. 78aaa et seq.), notwithstanding
 16 any contrary provision of any such Act.

17 **TITLE V—ENHANCING PENSION** 18 **PROTECTION FOR EMPLOYEES**

19 **Subtitle A—Improvements in** 20 **Disclosure**

21 **SEC. 501. PENSION BENEFIT INFORMATION.**

22 (a) PENSION BENEFIT STATEMENTS REQUIRED ON
 23 PERIODIC BASIS.—

1 (1) IN GENERAL.—Subsection (a) of section
2 105 of the Employee Retirement Income Security
3 Act of 1974 (29 U.S.C. 1025) is amended—

4 (A) by striking “shall furnish to any plan
5 participant or beneficiary who so requests in
6 writing,” and inserting “shall furnish at least
7 once every 3 years, in the case of a participant
8 in a defined benefit plan who has attained age
9 35, and annually, in the case of an individual
10 account plan, to each plan participant, and
11 shall furnish to any plan participant or bene-
12 ficiary who so requests,” and

13 (B) by adding at the end the following
14 flush sentence:

15 “Information furnished under the preceding sentence to
16 a participant in a defined benefit plan (other than at the
17 request of the participant) may be based on reasonable
18 estimates determined under regulations prescribed by the
19 Secretary.”.

20 (2) MODEL STATEMENT.—Section 105 of such
21 Act (29 U.S.C. 1025) is amended by adding at the
22 end the following new subsection:

23 “(e)(1) The Secretary of Labor shall develop a model
24 benefit statement which shall be used by plan administra-

1 tors in complying with the requirements of subsection (a).

2 Such statement shall include—

3 “(A) the amount of nonforfeitable accrued ben-
4 efits as of the statement date which is payable at
5 normal retirement age under the plan,

6 “(B) the amount of accrued benefits which are
7 forfeitable but which may become nonforfeitable
8 under the terms of the plan,

9 “(C) the amount or percentage of any reduction
10 due to integration of the benefit with the partici-
11 pant’s Social Security benefits or similar govern-
12 mental benefits,

13 “(D) information on early retirement benefit
14 and joint and survivor annuity reductions, and

15 “(E) the percentage of the net return on invest-
16 ment of plan assets for the preceding plan year (or,
17 with respect to investments directed by the partici-
18 pant, the net return on investment of plan assets for
19 such year so directed), itemized with respect to each
20 type of investment, and, stated separately, the ad-
21 ministrative and transaction fees incurred in connec-
22 tion with each such type of investment, and

23 “(F) in the case of an individual account plan,
24 the amount and percentage of assets in the indi-
25 vidual account that consists of employer securities

1 and employer real property (as defined in para-
 2 graphs (1) and (2), respectively, of section 407(d)),
 3 as determined as of the most recent valuation date
 4 of the plan.

5 “(2) The Secretary shall also develop a separate no-
 6 tice, which shall be included by the plan administrator
 7 with the information furnished pursuant to subsection (a),
 8 which advises participants and beneficiaries of generally
 9 accepted investment principles, including principles of risk
 10 management and diversification for long-term retirement
 11 security and the risks of holding substantial assets in a
 12 single asset such as employer securities.”.

13 (3) RULE FOR MULTIEMPLOYER PLANS.—Sub-
 14 section (d) of section 105 of such Act (29 U.S.C.
 15 1025) is amended to read as follows:

16 “(d) Each administrator of a plan to which more than
 17 1 unaffiliated employer is required to contribute shall fur-
 18 nish to any plan participant or beneficiary who so requests
 19 in writing, a statement described in subsection (a).”.

20 (b) DISCLOSURE OF BENEFIT CALCULATIONS.—

21 (1) IN GENERAL.—Section 105 of such Act (as
 22 amended by subsection (a)) is amended further—

23 (A) by redesignating subsections (b), (c),
 24 (d), and (e) as subsections (c), (d), (e), and (f),
 25 respectively; and

1 (B) by inserting after subsection (a) the
2 following new subsection:

3 “(b)(1) In the case of a participant or beneficiary who
4 is entitled to a distribution of a benefit under an employee
5 pension benefit plan, the administrator of such plan shall
6 provide to the participant or beneficiary the information
7 described in paragraph (2) upon the written request of
8 the participant or beneficiary.

9 “(2) The information described in this paragraph
10 includes—

11 “(A) a worksheet explaining how the amount of
12 the distribution was calculated and stating the as-
13 sumptions used for such calculation,

14 “(B) upon written request of the participant or
15 beneficiary, any documents relating to the calcula-
16 tion (if available), and

17 “(C) such other information as the Secretary
18 may prescribe.

19 Any information provided under this paragraph shall be
20 in a form calculated to be understood by the average plan
21 participant.”.

22 (2) CONFORMING AMENDMENTS.—

23 (A) Section 101(a)(2) of such Act (29
24 U.S.C. 1021(a)(2)) is amended by striking

1 “105(a) and (c)” and inserting “105(a), (b),
2 and (d)”.

3 (B) Section 105(c) of such Act (as redesign-
4 nated by paragraph (1)(A) of this subsection) is
5 amended by inserting “or (b)” after “subsection
6 (a)”.

7 (C) Section 106(b) of such Act (29 U.S.C.
8 1026(b)) is amended by striking “sections
9 105(a) and 105(c)” and inserting “subsections
10 (a), (b), and (d) of section 105”.

11 (c) AMENDMENTS TO INTERNAL REVENUE CODE OF
12 1986.—

13 (1) EXCISE TAX ON FAILURE OF DEFINED CON-
14 TRIBUTION PLANS TO PROVIDE NOTICE OF GEN-
15 ERALLY ACCEPTED INVESTMENT PRINCIPLES.—

16 Chapter 43 of the Internal Revenue Code of 1986
17 (relating to qualified pension, etc., plans) is amend-
18 ed by adding at the end the following new section:

19 **“SEC. 4980I. FAILURE OF DEFINED CONTRIBUTION PLANS**
20 **TO PROVIDE NOTICE OF GENERALLY AC-**
21 **CEPTED INVESTMENT PRINCIPLES.**

22 “(a) IMPOSITION OF TAX.—There is hereby imposed
23 a tax on the failure of any defined contribution plan to
24 meet the requirements of subsection (e) with respect to
25 any participant or beneficiary.

1 “(b) AMOUNT OF TAX.—The amount of the tax im-
2 posed by subsection (a) on any failure with respect to any
3 participant or beneficiary shall be \$1,000 for each day on
4 which such failure is not corrected.

5 “(c) LIMITATIONS ON AMOUNT OF TAX.—

6 “(1) TAX NOT TO APPLY TO FAILURES COR-
7 RECTED AS SOON AS REASONABLY PRACTICABLE.—
8 No tax shall be imposed by subsection (a) on any
9 failure if—

10 “(A) any person subject to liability for the
11 tax under subsection (d) exercised reasonable
12 diligence to meet the requirements of subsection
13 (e), and

14 “(B) such person provides the notice de-
15 scribed in subsection (e) as soon as reasonably
16 practicable after the first date such person
17 knew, or exercising reasonable diligence should
18 have known, that such failure existed.

19 “(2) OVERALL LIMITATION FOR UNINTEN-
20 TIONAL FAILURES.—

21 “(A) IN GENERAL.—If the person subject
22 to liability for tax under subsection (d) exer-
23 cised reasonable diligence to meet the require-
24 ments of subsection (e), the tax imposed by
25 subsection (a) for failures during the taxable

1 year of the employer (or, in the case of a multi-
2 employer plan, the taxable year of the trust
3 forming part of the plan) shall not exceed
4 \$500,000. For purposes of the preceding sen-
5 tence, all multiemployer plans of which the
6 same trust forms a part shall be treated as 1
7 plan.

8 “(B) TAXABLE YEARS IN THE CASE OF
9 CERTAIN CONTROLLED GROUPS.—For purposes
10 of this paragraph, if all persons who are treated
11 as a single employer for purposes of this section
12 do not have the same taxable year, the taxable
13 years taken into account shall be determined
14 under principles similar to the principles of sec-
15 tion 1561.

16 “(3) WAIVER BY SECRETARY.—In the case of a
17 failure which is due to reasonable cause and not to
18 willful neglect, the Secretary may waive part or all
19 of the tax imposed by subsection (a) to the extent
20 that the payment of such tax would be excessive or
21 otherwise inequitable relative to the failure involved.

22 “(d) LIABILITY FOR TAX.—The following shall be lia-
23 ble for the tax imposed by subsection (a):

24 “(1) In the case of a plan other than a multi-
25 employer plan, the employer.

1 “(2) In the case of a multiemployer plan, the
2 plan.

3 “(e) REQUIREMENTS RELATING TO NOTICE OF GEN-
4 ERALLY ACCEPTED INVESTMENT PRINCIPLES.—The plan
5 administrator of any defined contribution plan shall pro-
6 vide annually a separate notice which advises participants
7 and beneficiaries of generally accepted investment prin-
8 ciples, including principles of risk management and diver-
9 sification for long-term retirement security and the risks
10 of holding substantial assets in a single asset such as em-
11 ployer securities.”.

12 (2) CLERICAL AMENDMENT.—The table of sec-
13 tions for chapter 43 of such Code is amended by
14 adding at the end the following new item:

 “Sec. 4980I. Failure of defined contribution plans to provide no-
 tice of generally accepted investment principles.”.

15 **SEC. 502. IMMEDIATE WARNING OF EXCESSIVE STOCK**
16 **HOLDINGS.**

17 Section 105 of the Employee Retirement Income Se-
18 curity Act of 1974 (29 U.S.C. 1025) (as amended by sec-
19 tion 501 of this Act) is amended further by adding at the
20 end the following new subsection:

21 “(g)(1) Upon receipt of information by the plan ad-
22 ministrator of an individual account plan indicating that
23 the individual account of any participant which had not
24 been excessively invested in employer securities is exces-

1 sively invested in such securities (or that such account,
2 as initially invested, is excessively invested in employer se-
3 curities), the plan administrator shall immediately provide
4 to the participant a separate, written statement—

5 “(A) indicating that the participant’s account
6 has become excessively invested in employer securi-
7 ties,

8 “(B) setting forth the notice described in sub-
9 section (e)(7), and

10 “(C) referring the participant to investment
11 education materials and investment advice which
12 shall be made available by or under the plan.

13 In any case in which such a separate, written statement
14 is required to be provided to a participant under this para-
15 graph, each statement issued to such participant pursuant
16 to subsection (a) thereafter shall also contain such sepa-
17 rate, written statement until the plan administrator is
18 made aware that such participant’s account has ceased to
19 be excessively invested in employer securities or the em-
20 ployee, in writing, waives the receipt of the notice and ac-
21 knowledges understanding the importance of diversifica-
22 tion.

23 “(2) Each notice required under this subsection shall
24 be provided in a form and manner which shall be pre-
25 scribed in regulations of the Secretary. Such regulations

1 shall provide for inclusion in the notice a prominent ref-
2 erence to the risks of large losses in assets available for
3 retirement from excessive investment in employer securi-
4 ties.

5 “(3) For purposes of paragraph (1), a participant’s
6 account is ‘excessively invested’ in employer securities if
7 more than 10 percent of the balance in such account is
8 invested in employer securities (as defined in section
9 407(d)(1)).”.

10 **SEC. 503. ADDITIONAL FIDUCIARY PROTECTIONS RELAT-**
11 **ING TO LOCKDOWNS.**

12 (a) AMENDMENT TO EMPLOYEE RETIREMENT IN-
13 COME SECURITY ACT OF 1974.—Section 404 of the Em-
14 ployee Retirement Income Security Act of 1974 (29
15 U.S.C. 1104) is amended by adding at the end the fol-
16 lowing new subsection:

17 “(e)(1) In the case of any eligible individual account
18 plan (as defined in section 407(d)(3)) no lockdown may
19 take effect until at least 30 days after written notice of
20 such lockdown is provided by the plan administrator to
21 such participant or beneficiary (and to each employee or-
22 ganization representing any such participant).

23 “(2) Subject to such regulations as the Secretary may
24 prescribe, the requirements of paragraph (1) shall not
25 apply in cases of emergency.

1 “(3) A plan described in paragraph (1) shall provide
 2 that each participant and beneficiary required to receive
 3 a notice under paragraph (1)(A) is entitled to direct the
 4 plan to divest within 3 business days (but in no event later
 5 than the beginning of the lockdown) any security or other
 6 property in which any assets allocated to the account of
 7 such individual are invested and to reinvest such assets
 8 in any other investment option offered under the plan.

9 “(4) For purposes of this subsection, the term
 10 ‘lockdown’ means any temporary lockdown, blackout, or
 11 freeze with respect to, suspension of, or similar limitation
 12 on the ability of a participant or beneficiary to exercise
 13 control over the assets in his or her account as otherwise
 14 generally provided under the plan (as determined under
 15 regulations of the Secretary), including the ability to di-
 16 rect investments, obtain loans, or obtain distributions.”.

17 (b) AMENDMENTS TO INTERNAL REVENUE CODE OF
 18 1986.—

19 (1) EXCISE TAX ON FAILURES WITH RESPECT
 20 TO LOCKDOWNS.—Chapter 43 of the Internal Rev-
 21 enue Code of 1986 (relating to qualified pension,
 22 etc., plans) is amended by adding at the end the fol-
 23 lowing new section:

1 **“SEC. 4980G. FAILURE OF DEFINED CONTRIBUTION PLANS**
2 **WITH RESPECT TO LOCKDOWNS.**

3 “(a) IMPOSITION OF TAX.—There is hereby imposed
4 a tax on the failure of any defined contribution plan to
5 meet the requirements of subsection (e) with respect to
6 any participant or beneficiary.

7 “(b) AMOUNT OF TAX.—The amount of the tax im-
8 posed by subsection (a) on any failure with respect to any
9 participant or beneficiary shall be \$100.

10 “(c) LIMITATIONS ON AMOUNT OF TAX.—

11 “(1) TAX NOT TO APPLY TO FAILURES COR-
12 RECTED AS SOON AS REASONABLY PRACTICABLE.—
13 No tax shall be imposed by subsection (a) on any
14 failure if—

15 “(A) any person subject to liability for the
16 tax under subsection (d) exercised reasonable
17 diligence to meet the requirements of subsection
18 (e), and

19 “(B) such person meets the requirements
20 of subsection (e) as soon as reasonably prac-
21 ticable after the first date such person knew, or
22 exercising reasonable diligence should have
23 known, that such failure existed.

24 “(2) OVERALL LIMITATION FOR UNINTEN-
25 TIONAL FAILURES.—

1 “(A) IN GENERAL.—If the person subject
2 to liability for tax under subsection (d) exer-
3 cised reasonable diligence to meet the require-
4 ments of subsection (e), the tax imposed by
5 subsection (a) for failures during the taxable
6 year of the employer (or, in the case of a multi-
7 employer plan, the taxable year of the trust
8 forming part of the plan) shall not exceed
9 \$500,000. For purposes of the preceding sen-
10 tence, all multiemployer plans of which the
11 same trust forms a part shall be treated as 1
12 plan.

13 “(B) TAXABLE YEARS IN THE CASE OF
14 CERTAIN CONTROLLED GROUPS.—For purposes
15 of this paragraph, if all persons who are treated
16 as a single employer for purposes of this section
17 do not have the same taxable year, the taxable
18 years taken into account shall be determined
19 under principles similar to the principles of sec-
20 tion 1561.

21 “(3) WAIVER BY SECRETARY.—In the case of a
22 failure which is due to reasonable cause and not to
23 willful neglect, the Secretary may waive part or all
24 of the tax imposed by subsection (a) to the extent

1 that the payment of such tax would be excessive or
2 otherwise inequitable relative to the failure involved.

3 “(d) LIABILITY FOR TAX.—The following shall be lia-
4 ble for the tax imposed by subsection (a):

5 “(1) In the case of a plan other than a multi-
6 employer plan, the employer.

7 “(2) In the case of a multiemployer plan, the
8 plan.

9 “(e) REQUIREMENTS RELATING TO LOCKDOWNS.—

10 “(1) IN GENERAL.—In the case of any defined
11 contribution plan no lockdown may take effect until
12 at least 30 days after written notice of such
13 lockdown is provided by the plan administrator to
14 each participant or beneficiary (and to each em-
15 ployee organization representing any such partici-
16 pant).

17 “(2) EXCEPTION FOR EMERGENCY.—Subject to
18 such regulations as the Secretary may prescribe, the
19 requirements of paragraph (1) shall not apply in
20 cases of emergency.

21 “(3) REQUIREMENT RELATING TO DIVEST-
22 MENT.—A plan described in paragraph (1) shall pro-
23 vide that each participant and beneficiary required
24 to receive a notice under paragraph (1)(A) is enti-
25 tled to direct the plan to divest within 3 business

1 days (but in no event later than the beginning of the
 2 lockdown) any security or other property in which
 3 any assets allocated to the account of such indi-
 4 vidual are invested and to reinvest such assets in
 5 any other investment option offered under the plan.

6 “(4) LOCKDOWN DEFINED.—For purposes of
 7 this subsection, the term ‘lockdown’ means any tem-
 8 porary lockdown, blackout, or freeze with respect to,
 9 suspension of, or similar limitation on the ability of
 10 a participant or beneficiary to exercise control over
 11 the assets in his or her account as otherwise gen-
 12 erally provided under the plan (as determined under
 13 regulations of the Secretary), including the ability to
 14 direct investments, obtain loans, or obtain distribu-
 15 tions.”.

16 (2) CLERICAL AMENDMENT.—The table of sec-
 17 tions for chapter 43 of such Code is amended by
 18 adding at the end the following new item:

“Sec. 4980G. Failure of defined contribution plans with respect
 to lockdowns.”.

19 **SEC. 504. REPORT TO PARTICIPANTS AND BENEFICIARIES**
 20 **OF TRADES IN EMPLOYER SECURITIES.**

21 (a) IN GENERAL.—Section 104 of the Employee Re-
 22 tirement Income Security Act of 1974 (29 U.S.C. 1024)
 23 is amended—

1 (1) by redesignating subsection (d) as sub-
2 section (e); and

3 (2) by inserting after subsection (c) the fol-
4 lowing new subsection:

5 “(d)(1) In any case in which assets in the individual
6 account of a participant or beneficiary under an individual
7 account plan include employer securities, if any person en-
8 gages in a transaction constituting a direct or indirect
9 purchase or sale of employer securities and—

10 “(A) such transaction is required under section
11 16 of the Securities Exchange Act of 1934 to be re-
12 ported by such person to the Securities and Ex-
13 change Commission, or

14 “(B) such person is a named fiduciary of the
15 plan,

16 such person shall comply with the requirements of para-
17 graph (2).

18 “(2) A person described in paragraph (1) complies
19 with the requirements of this paragraph in connection
20 with a transaction described in paragraph (1) if such per-
21 son provides to the plan administrator of the plan a writ-
22 ten notification of the transaction not later than 1 busi-
23 ness day after the date of the transaction.

24 “(3)(A) If the plan administrator is made aware, on
25 the basis of notifications received pursuant to paragraph

1 (2) or otherwise, that the proceeds from any transaction
2 described in paragraph (1), constituting direct or indirect
3 sales of employer securities by any person described in
4 paragraph (1), exceed \$100,000, the plan administrator
5 of the plan shall provide to each participant and bene-
6 ficiary a notification of such transaction. Such notification
7 shall be in writing, except that such notification may be
8 in electronic or other form to the extent that such form
9 is reasonably accessible to the participant or beneficiary.

10 “(B) In any case in which the proceeds from any
11 transaction described in paragraph (1) (with respect to
12 which a notification has not been provided pursuant to
13 this paragraph), together with the proceeds from any
14 other such transaction or transactions described in para-
15 graph (1) occurring during the preceding one-year period,
16 constituting direct or indirect sales of employer securities
17 by any person described in paragraph (1), exceed (in the
18 aggregate) \$100,000, such series of transactions by such
19 person shall be treated as a transaction described in sub-
20 paragraph (A) by such person.

21 “(C) Each notification required under this paragraph
22 shall be provided as soon as practicable, but not later than
23 3 business days after receipt of the written notification
24 or notifications indicating that the transaction (or series
25 of transactions) requiring such notice has occurred.

1 “(4) Each notification required under paragraph (2)
2 or (3) shall be made in such form and manner as may
3 be prescribed in regulations of the Secretary and shall in-
4 clude the number of shares involved in each transaction
5 and the price per share, and the notification required
6 under paragraph (3) shall be written in language designed
7 to be understood by the average plan participant. The Sec-
8 retary may provide by regulation, in consultation with the
9 Securities and Exchange Commission, for exemptions
10 from the requirements of this subsection with respect to
11 specified types of transactions to the extent that such ex-
12 emptions are consistent with the best interests of plan par-
13 ticipants and beneficiaries. Such exemptions may relate to
14 transactions involving reinvestment plans, stock splits,
15 stock dividends, qualified domestic relations orders, and
16 similar matters.

17 “(5) For purposes of this subsection, the term ‘em-
18 ployer security’ has the meaning provided in section
19 407(d)(1).”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall apply with respect to transactions occur-
22 ring on or after October 1, 2002.

1 **SEC. 505. PROVISION TO PARTICIPANTS AND BENE-**
2 **FICIARIES OF MATERIAL INVESTMENT IN-**
3 **FORMATION IN ACCURATE FORM.**

4 Section 404(c) of the Employee Retirement Income
5 Security Act of 1974 (29 U.S.C. 1104(c)) is amended by
6 adding at the end the following new paragraph:

7 “(4) The plan sponsor and plan administrator of a
8 pension plan described in paragraph (1) shall have a fidu-
9 ciary duty to ensure that each participant and beneficiary
10 under the plan, in connection with the investment by the
11 participant or beneficiary of plan assets in the exercise of
12 his or her control over assets in his account, is provided
13 with all material investment information regarding invest-
14 ment of such assets to the extent that the provision of
15 such information is generally required to be disclosed by
16 the plan sponsor to investors in connection with such an
17 investment under applicable securities laws. The provision
18 by the plan sponsor or plan administrator of any mis-
19 leading investment information shall be treated as a viola-
20 tion of this paragraph.”.

21 **SEC. 506. ENFORCEMENT OF INFORMATION AND DISCLO-**
22 **SURE REQUIREMENTS.**

23 (a) IN GENERAL.—Section 502(c) of the Employee
24 Retirement Income Security Act of 1974 (29 U.S.C.
25 1132(c)) is amended—

1 (1) by redesignating paragraph (7) as para-
 2 graph (8); and

3 (2) by inserting after paragraph (6) the fol-
 4 lowing new paragraph:

5 “(7) The Secretary may assess a civil penalty against
 6 any person required to provide any notification under the
 7 provisions of section 104(d), any statement under the pro-
 8 visions of subsection (a), (d), or (f) of section 105, any
 9 information under the provisions of section 404(c)(4), or
 10 any notice under the provisions of section 404(f)(1) of up
 11 to \$1,000 a day from the date of any failure by such per-
 12 son to provide such notification, statement, information,
 13 or notice in accordance with such provisions.”.

14 (b) CONFORMING AMENDMENT.—Section 502(a)(6)
 15 of such Act (29 U.S.C. 1132(a)(6)) (as amended by sec-
 16 tion 502(b) of this Act) is amended further by striking
 17 “(5), or (6)” and inserting “(5), (6), or (7)”.

18 **Subtitle B—Diversification**

19 **Requirements**

20 **SEC. 511. FREEDOM TO MAKE INVESTMENT DECISIONS**

21 **WITH PLAN ASSETS.**

22 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
 23 INCOME SECURITY ACT OF 1974.—Section 404 of the
 24 Employee Retirement Income Security Act of 1974 (29
 25 U.S.C. 1104) (as amended by section 503 of this Act) is

1 amended further by adding at the end the following new
2 subsection:

3 “(f)(1)(A)(i) Subject to clause (ii), an individual ac-
4 count plan under which a participant or beneficiary is per-
5 mitted to exercise control over assets in his or her account
6 shall provide that—

7 “(I) any such participant or beneficiary has the
8 right to allocate all assets in his or her account (and
9 any portion thereof) attributable to employee con-
10 tributions to any investment option provided under
11 the plan, and

12 “(II) any such participant who has completed 3
13 years of service (as defined in section 203(b)(2))
14 with the employer, or any such beneficiary of such
15 a participant, has the right to allocate all assets in
16 his or her account (and any portion thereof) attrib-
17 utable to employer contributions to any investment
18 option provided under the plan.

19 The application of any penalty or any restriction based
20 on age or years of service in connection with any exercise
21 of such right as provided under this clause shall be con-
22 strued as a violation of this clause.

23 “(ii) Clause (i) shall apply only to so much of a non-
24 forfeitable accrued benefit as consists of employer securi-

1 ties which are readily tradable on an established securities
2 market.

3 “(B)(i) Except as provided in clause (ii), within 5
4 days after the date of any election by a participant or ben-
5 eficiary allocating his or her nonforfeitable accrued benefit
6 to any investment option provided under the plan, the plan
7 administrator shall take such actions as are necessary to
8 effectuate such allocation.

9 “(ii) In any case in which the plan provides for elec-
10 tions periodically during prescribed periods, the 5-day pe-
11 riod described in clause (i) shall commence at the end of
12 each such prescribed period.

13 “(C) Nothing in this paragraph shall be construed to
14 limit the authority of a plan to impose limitations on the
15 portion of plan assets in any account which may be in-
16 vested in employer securities to the extent that any such
17 limitation is consistent with this title and not more restric-
18 tive than is permitted under this title.

19 “(2) Not later than 30 days prior to the date on
20 which the right of a participant under an individual ac-
21 count plan to his or her accrued benefit becomes non-
22 forfeitable, the plan administrator shall provide to such
23 participant and his or her beneficiaries a written notice—

24 “(A) setting forth their rights under this sec-
25 tion with respect to the accrued benefit, and

1 “(B) describing the importance of diversifying
2 the investment of account assets.”.

3 (b) AMENDMENTS TO THE INTERNAL REVENUE
4 CODE OF 1986.—

5 (1) EXCISE TAX ON FAILURE TO PERMIT DI-
6 VERSIFICATION OF EMPLOYER SECURITIES.—Chapter
7 ter 43 of the Internal Revenue Code of 1986 (relat-
8 ing to qualified pension, etc., plans) is amended by
9 adding at the end the following new section:

10 **“SEC. 4980H. FAILURE OF DEFINED CONTRIBUTION PLANS**
11 **TO PERMIT DIVERSIFICATION OF EMPLOYER**
12 **SECURITIES.**

13 “(a) IMPOSITION OF TAX.—There is hereby imposed
14 a tax on the failure of any defined contribution plan to
15 meet the requirements of subsection (e) with respect to
16 any participant or beneficiary.

17 “(b) AMOUNT OF TAX.—The amount of the tax im-
18 posed by subsection (a) on any failure with respect to any
19 participant or beneficiary shall be \$1,000 for each day for
20 which the failure is not corrected.

21 “(c) LIMITATIONS ON AMOUNT OF TAX.—

22 “(1) TAX NOT TO APPLY TO FAILURES COR-
23 RECTED AS SOON AS REASONABLY PRACTICABLE.—
24 No tax shall be imposed by subsection (a) on any
25 failure if—

1 “(A) any person subject to liability for the
2 tax under subsection (d) exercised reasonable
3 diligence to meet the requirements of subsection
4 (e), and

5 “(B) such person meets the requirements
6 of subsection (e) as soon as reasonably prac-
7 ticable after the first date such person knew, or
8 exercising reasonable diligence should have
9 known, that such failure existed.

10 “(2) OVERALL LIMITATION FOR UNINTEN-
11 TIONAL FAILURES.—

12 “(A) IN GENERAL.—If the person subject
13 to liability for tax under subsection (d) exer-
14 cised reasonable diligence to meet the require-
15 ments of subsection (e), the tax imposed by
16 subsection (a) for failures during the taxable
17 year of the employer (or, in the case of a multi-
18 employer plan, the taxable year of the trust
19 forming part of the plan) shall not exceed
20 \$500,000. For purposes of the preceding sen-
21 tence, all multiemployer plans of which the
22 same trust forms a part shall be treated as 1
23 plan.

24 “(B) TAXABLE YEARS IN THE CASE OF
25 CERTAIN CONTROLLED GROUPS.—For purposes

1 of this paragraph, if all persons who are treated
2 as a single employer for purposes of this section
3 do not have the same taxable year, the taxable
4 years taken into account shall be determined
5 under principles similar to the principles of sec-
6 tion 1561.

7 “(3) WAIVER BY SECRETARY.—In the case of a
8 failure which is due to reasonable cause and not to
9 willful neglect, the Secretary may waive part or all
10 of the tax imposed by subsection (a) to the extent
11 that the payment of such tax would be excessive or
12 otherwise inequitable relative to the failure involved.

13 “(d) LIABILITY FOR TAX.—The following shall be lia-
14 ble for the tax imposed by subsection (a):

15 “(1) In the case of a plan other than a multi-
16 employer plan, the employer.

17 “(2) In the case of a multiemployer plan, the
18 plan.

19 “(e) REQUIREMENTS RELATING TO DIVERSIFICA-
20 TION OF EMPLOYER SECURITY.—

21 “(1) IN GENERAL.—The requirements of this
22 subsection are the requirements of paragraphs (2),
23 (3), and (4).

24 “(2) RIGHT TO DIRECT INVESTMENTS.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), a plan meets the requirements of
3 this paragraph if, under the plan—

4 “(i) any participant or beneficiary
5 who is permitted to exercise control over
6 assets in his or her account has the right
7 to allocate all assets in his or her account
8 (and any portion thereof) attributable to
9 employee contributions to any investment
10 option provided under the plan, and

11 “(ii) any such participant who has
12 completed 3 years of service (as defined in
13 section 411(a)(5)) with the employer, or
14 any such beneficiary of such a participant,
15 has the right to allocate all assets in his or
16 her account (and any portion thereof) at-
17 tributable to employer contributions to any
18 investment option provided under the plan.

19 The application of any penalty or any restric-
20 tion based on age or years of service in connec-
21 tion with any exercise of such right as provided
22 under this clause shall be construed as a viola-
23 tion of this clause.

24 “(B) LIMITATION TO READILY TRADABLE
25 EMPLOYER SECURITIES.—Subparagraph (A)

1 shall apply only to so much of a nonforfeitable
2 accrued benefit as consists of employer securi-
3 ties which are readily tradable on an established
4 securities market.

5 “(3) PROMPT COMPLIANCE WITH DIRECTIONS
6 TO ALLOCATE INVESTMENTS.—

7 “(A) IN GENERAL.—Except as provided in
8 subparagraph (B), a plan meets the require-
9 ments of this paragraph if the plan provides
10 that, within 5 days after the date of any elec-
11 tion by a participant or beneficiary allocating
12 his or her nonforfeitable accrued benefit to any
13 investment option provided under the plan, the
14 plan administrator shall take such actions as
15 are necessary to effectuate such allocation.

16 “(B) SPECIAL RULE FOR PERIODIC ELEC-
17 TIONS.—In any case in which the plan provides
18 for elections periodically during prescribed peri-
19 ods, the 5-day period described in subparagraph
20 (A) shall commence at the end of each such
21 prescribed period.

22 “(4) NOTICE OF RIGHTS AND OF IMPORTANCE
23 OF DIVERSIFICATION.—A plan meets the require-
24 ments of this paragraph if the plan provides that,
25 not later than 30 days prior to the date on which

1 the right of a participant under the plan to his or
 2 her accrued benefit becomes nonforfeitable, the plan
 3 administrator shall provide to such participant and
 4 his or her beneficiaries a written notice—

5 “(A) setting forth their rights under this
 6 section with respect to the accrued benefit, and

7 “(B) describing the importance of diversi-
 8 fying the investment of account assets.

9 “(5) PRESERVATION OF AUTHORITY OF PLAN
 10 TO LIMIT INVESTMENT.—Nothing in this subsection
 11 shall be construed to limit the authority of a plan to
 12 impose limitations on the portion of plan assets in
 13 any account which may be invested in employer se-
 14 curities.”.

15 (2) CLERICAL AMENDMENT.—The table of sec-
 16 tions for chapter 43 of such Code is amended by
 17 adding at the end the following new item:

“Sec. 4980H. Failure of defined contribution plans to permit di-
 versification of employer securities.”.

18 (c) RECOMMENDATIONS RELATING TO NON-PUB-
 19 LICLY TRADED STOCK.—Within 1 year after the date of
 20 the enactment of this Act, the Secretary of Labor and the
 21 Secretary of the Treasury shall jointly transmit to the
 22 Committee on Education and the Workforce and the Com-
 23 mittee on Ways and Means of the House of Representa-
 24 tives and the Committee on Health, Education, Labor,

1 and Pensions and the Committee on Finance of the Senate
2 their recommendations regarding legislative changes relat-
3 ing to treatment, under section 404(e) of the Employee
4 Retirement Income Security Act of 1974 and section
5 401(a)(35) of the Internal Revenue Code of 1986 (as
6 added by this section), of individual account plans under
7 which a participant or beneficiary is permitted to exercise
8 control over assets in his or her account, in cases in which
9 such assets do not include employer securities which are
10 readily tradable under an established securities market.

11 **SEC. 512. EFFECTIVE DATE OF SUBTITLE.**

12 (a) IN GENERAL.—Subject to subsection (b), the
13 amendments made by this subtitle shall apply with respect
14 to plan years beginning on or after January 1, 2003.

15 (b) DELAYED EFFECTIVE DATE FOR EXISTING
16 HOLDINGS.—In any case in which a portion of the non-
17 forfeitable accrued benefit of a participant or beneficiary
18 is held in the form of employer securities (as defined in
19 section 407(d)(1) of the Employee Retirement Income Se-
20 curity Act of 1974) immediately before the first date of
21 the first plan year to which the amendments made by this
22 subtitle apply, such portion shall be taken into account
23 only with respect to plan years beginning on or after Janu-
24 ary 1, 2004.

Subtitle C—Employee Representation

SEC. 521. PARTICIPATION OF PARTICIPANTS IN TRUSTEE- SHIP OF INDIVIDUAL ACCOUNT PLANS.

(a) IN GENERAL.—Section 403(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1103(a)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by inserting “(1)” after “(a)”; and

(3) by adding at the end the following new paragraph:

“(2)(A) The assets of a single-employer plan which is an individual account plan and under which some or all of the assets are derived from employee contributions shall be held in trust by a joint board of trustees, which shall consist of two or more trustees representing on an equal basis the interests of the employer or employers maintaining the plan and the interests of the participants and their beneficiaries and having equal voting rights.

“(B)(i) Except as provided in clause (ii), in any case in which the plan is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and one or more employers, the trustees representing the interests of the participants and their

1 beneficiaries shall be designated by such employee organi-
2 zations.

3 “(ii) Clause (i) shall not apply with respect to a plan
4 described in such clause if the employee organization (or
5 all employee organizations, if more than one) referred to
6 in such clause file with the Secretary, in such form and
7 manner as shall be prescribed in regulations of the Sec-
8 retary, a written waiver of their rights under clause (i).

9 “(iii) In any case in which clause (i) does not apply
10 with respect to a single-employer plan because the plan
11 is not described in clause (i) or because of a waiver filed
12 pursuant to clause (ii), the trustee or trustees representing
13 the interests of the participants and their beneficiaries
14 shall be selected by the plan participants in accordance
15 with regulations of the Secretary.

16 “(C) An individual shall not be treated as ineligible
17 for selection as trustee solely because such individual is
18 an employee of the plan sponsor, except that the employee
19 so selected may not be a highly compensated employee (as
20 defined in section 414(q) of the Internal Revenue Code
21 of 1986).

22 “(D) The Secretary shall provide by regulation for
23 the appointment of a neutral individual, in accordance
24 with the procedures under section 203(f) of the Labor
25 Management Relations Act, 1947 (29 U.S.C. 173(f)), to

1 cast votes as necessary to resolve tie votes by the trust-
2 ees.”.

3 (b) REGULATIONS.—The Secretary of Labor shall
4 prescribe the initial regulations necessary to carry out the
5 provisions of the amendments made by this section not
6 later than 90 days after the date of the enactment of this
7 Act.

8 **Subtitle D—Executive Parity**

9 **SEC. 531. INSIDER TRADES DURING PENSION FUND BLACK-** 10 **OUT PERIODS PROHIBITED.**

11 (a) PROHIBITION.—It shall be unlawful for any per-
12 son who is directly or indirectly the beneficial owner of
13 more than 10 percent of any class of any equity security
14 (other than an exempted security) which is registered
15 under section 12 of the Securities Exchange Act of 1934
16 (15 U.S.C. 78l) or who is a director or an officer of the
17 issuer of such security, directly or indirectly, to purchase
18 (or otherwise acquire) or sell (or otherwise transfer) any
19 equity security of any issuer (other than an exempted se-
20 curity), during any blackout period with respect to such
21 equity security.

22 (b) REMEDY.—Any profit realized by such beneficial
23 owner, director, or officer from any purchase (or other ac-
24 quisition) or sale (or other transfer) in violation of this
25 section shall inure to and be recoverable by the issuer irre-

1 spective of any intention on the part of such beneficial
2 owner, director, or officer in entering into the transaction.
3 Suit to recover such profit may be instituted at law or
4 in equity in any court of competent jurisdiction by the
5 issuer, or by the owner of any security of the issuer in
6 the name and in behalf of the issuer if the issuer shall
7 fail or refuse to bring such suit within 60 days after re-
8 quest or shall fail diligently to prosecute the same there-
9 after; but no such suit shall be brought more than 2 years
10 after the date such profit was realized. This subsection
11 shall not be construed to cover any transaction where such
12 beneficial owner was not such both at the time of the pur-
13 chase and sale, or the sale and purchase, of the security
14 or security-based swap (as defined in section 206B of the
15 Gramm-Leach-Bliley Act) involved, or any transaction or
16 transactions which the Commission by rules and regula-
17 tions may exempt as not comprehended within the pur-
18 poses of this subsection.

19 (c) RULEMAKING PERMITTED.—The Commission
20 may issue rules to clarify the application of this sub-
21 section, to ensure adequate notice to all persons affected
22 by this subsection, and to prevent evasion thereof.

23 (d) As used in this section:

24 (1) BENEFICIAL OWNER.—The term “beneficial
25 owner” has the meaning provided such term in rules

1 or regulations issued by the Commission under sec-
2 tion 16 of the Securities Exchange Act of 1934 (15
3 U.S.C. 78p).

4 (2) BLACKOUT PERIOD.—The term “blackout
5 period” with respect to the equity securities of any
6 issuer—

7 (A) means any period during which the
8 ability of at least fifty percent of the partici-
9 pants or beneficiaries under all applicable indi-
10 vidual account plans maintained by the issuer
11 to purchase (or otherwise acquire) or sell (or
12 otherwise transfer) an interest in any equity of
13 such issuer is suspended by the issuer or a fidu-
14 ciary of the plan; but

15 (B) does not include—

16 (i) a period in which the employees of
17 an issuer may not allocate their interests
18 in the individual account plan due to an
19 express investment restriction—

20 (I) incorporated into the indi-
21 vidual account plan; and

22 (II) timely disclosed to employees
23 before joining the individual account
24 plan or as a subsequent amendment
25 to the plan;

1 (ii) any suspension described in sub-
2 paragraph (A) that is imposed solely in
3 connection with persons becoming partici-
4 pants or beneficiaries, or ceasing to be par-
5 ticipants or beneficiaries, in an applicable
6 individual account plan by reason of a cor-
7 porate merger, acquisition, divestiture, or
8 similar transaction.

9 (3) COMMISSION.—The term “Commission”
10 means the Securities and Exchange Commission.

11 (4) INDIVIDUAL ACCOUNT PLAN.—The term
12 “individual account plan” has the meaning provided
13 such term in section 3(34) of the Employee Retire-
14 ment Income Security Act of 1974 (29 U.S.C.
15 1002(34)).

16 (5) ISSUER.—The term “issuer” shall have the
17 meaning set forth in section 2(a)(4) of the Securities
18 Act of 1933 (15 U.S.C. 77b(a)(4)).

**Subtitle E—Increased
Accountability**

**SEC. 541. BONDING OR INSURANCE ADEQUATE TO PRO-
TECT INTEREST OF PARTICIPANTS AND
BENEFICIARIES.**

Section 412 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1112) is amended by adding at the end the following new subsection:

“(f) Notwithstanding the preceding provisions of this section, each fiduciary of an individual account plan shall be bonded or insured, in accordance with regulations which shall be prescribed by the Secretary, in an amount sufficient to ensure coverage by the bond or insurance of financial losses due to any failure to meet the requirements of this part.”.

SEC. 542. LIABILITY FOR BREACH OF FIDUCIARY DUTY.

(a) LIABILITY FOR PARTICIPATING IN OR CONCEALING FIDUCIARY BREACH.—

(1) APPLICATION TO PARTICIPANTS AND BENEFICIARIES OF 401(k) PLANS.—

(A) IN GENERAL.—Part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1101 et seq.) is amended by adding after section 409 the following new section:

1 **“SEC. 409A. LIABILITY FOR BREACH OF FIDUCIARY DUTY IN**
2 **401(k) PLANS.**

3 “(a) Any person who is a fiduciary with respect to
4 an individual account plan that includes a qualified cash
5 or deferred arrangement under section 401(k) of the In-
6 ternal Revenue Code of 1986 who breaches any of the re-
7 sponsibilities, obligations, or duties imposed upon fidu-
8 ciaries by this title shall be personally liable to make good
9 to each participant and beneficiary of the plan any losses
10 to such participant or beneficiary resulting from each such
11 breach, and to restore to such participant or beneficiary
12 any profits of such fiduciary which have been made
13 through use of assets of the plan by the fiduciary, and
14 shall be subject to such other equitable or remedial relief
15 as the court may deem appropriate, including removal of
16 such fiduciary. A fiduciary may also be removed for a vio-
17 lation of section 411 of this Act.

18 “(b) The right of participants and beneficiaries under
19 subsection (a) to sue for breach of fiduciary duty with re-
20 spect to an individual account plan that includes a quali-
21 fied cash or deferred arrangement under section 401(k)
22 of such Code shall be in addition to all existing rights that
23 participants and beneficiaries have under section 409, sec-
24 tion 502, and any other provision of this title, and shall
25 not be construed to give rise to any inference that such

1 rights do not already exist under section 409, section 502,
2 or any other provision of this title.

3 “(c) No fiduciary shall be liable with respect to a
4 breach of fiduciary duty under this title if such breach
5 was committed before he or she became a fiduciary or
6 after he or she ceased to be a fiduciary.”

7 (B) CONFORMING AMENDMENT.—The
8 table of contents for part 4 of subtitle B of title
9 I of such Act is amended by inserting the fol-
10 lowing new item after the item relating to sec-
11 tion 409:

“Sec. 409A. Liability for breach of fiduciary duty in 401(k)
plans.”

12 (2) INSIDER LIABILITY.—

13 (A) IN GENERAL.—Section 409 of the Em-
14 ployee Retirement Income Security Act of 1974
15 (29 U.S.C. 1109) is amended by redesignating
16 subsection (b) as subsection (c) and by insert-
17 ing after subsection (a) the following new sub-
18 section:

19 “(b)(1)(A) If an insider with respect to the plan spon-
20 sor of an employer individual account plan that holds em-
21 ployer securities that are readily tradable on an estab-
22 lished securities market—

1 “(i) knowingly participates in a breach of fidu-
2 ciary responsibility to which subsection (a) applies,
3 or

4 “(ii) knowingly undertakes to conceal such a
5 breach,

6 such insider shall be personally liable under this sub-
7 section for such breach in the same manner as the fidu-
8 ciary who commits such breach.

9 “(B) For purposes of subparagraph (A), the term ‘in-
10 sider’ means, with respect to any plan sponsor of a plan
11 to which subparagraph (A) applies—

12 “(i) any officer or director with respect to the
13 plan sponsor, or

14 “(ii) any independent qualified public account-
15 ant of the plan or of the plan sponsor.

16 “(3) Any relief provided under this subsection or sec-
17 tion 409A—

18 “(A) to an individual account plan shall inure
19 to the individual accounts of the affected partici-
20 pants or beneficiaries, and

21 “(B) to a participant or beneficiary shall be
22 payable to the individual account plan on behalf of
23 such participant or beneficiary unless such plan has
24 been terminated.”

1 (B) CONFORMING AMENDMENT.—Section
 2 409(c) of such Act (29 U.S.C. 1109(c)), as re-
 3 designated by subparagraph (A), is amended by
 4 inserting before the period the following:
 5 “, unless such liability arises under subsection
 6 (b)”.

7 (b) MAINTENANCE OF FIDUCIARY LIABILITY.—Sec-
 8 tion 404(c)(1)(B) of such Act (29 U.S.C. 1104(c)(1)(B))
 9 is amended by inserting before the period the following:
 10 “, except that this subparagraph shall not be construed
 11 to exempt any fiduciary from liability for any violation of
 12 this section”.

13 **SEC. 543. PRESERVATION OF RIGHTS OR CLAIMS.**

14 Section 502 of the Employee Retirement Income Se-
 15 curity Act of 1974 (29 U.S.C. 1132) is amended by adding
 16 at the end the following new subsection:

17 “(n)(1) The rights under this title (including the
 18 right to maintain a civil action) may not be waived, de-
 19 ferred, or lost pursuant to any agreement not authorized
 20 under this title with specific reference to this subsection.

21 “(2) Paragraph (1) shall not apply to an agreement
 22 providing for arbitration or participation in any other non-
 23 judicial procedure to resolve a dispute if the agreement
 24 is entered into knowingly and voluntarily by the parties

1 involved after the dispute has arisen or is pursuant to the
 2 terms of a collective bargaining agreement.”.

3 **SEC. 544. OFFICE OF PENSION PARTICIPANT ADVOCACY.**

4 (a) IN GENERAL.—Title III of the Employee Retirement
 5 Income Security Act of 1974 (29 U.S.C. 3001 et
 6 seq.) is amended by adding at the end the following:

7 **“Subtitle C—Pension Participant**
 8 **Advocacy**

9 “OFFICE OF PENSION PARTICIPANT ADVOCACY

10 “SEC. 3051. (a) ESTABLISHMENT OF OFFICE.—

11 “(1) IN GENERAL.—There is established in the
 12 Department of Labor an office to be known as the
 13 ‘Office of Pension Participant Advocacy’.

14 “(2) PENSION PARTICIPANT ADVOCATE.—The
 15 Office of Pension Participant Advocacy shall be
 16 under the supervision and direction of an official to
 17 be known as the ‘Pension Participant Advocate’ who
 18 shall—

19 “(A) have demonstrated experience in the
 20 area of pension participant assistance, and

21 “(B) be selected by the Secretary after
 22 consultation with pension participant advocacy
 23 organizations.

24 The Pension Participant Advocate shall report di-
 25 rectly to the Secretary and shall be entitled to com-

1 pensation at the same rate as the highest rate of
2 basic pay established for the Senior Executive Serv-
3 ice under section 5382 of title 5, United States
4 Code.

5 “(b) FUNCTIONS OF OFFICE.—It shall be the func-
6 tion of the Office of Pension Participant Advocacy to—

7 “(1) evaluate the efforts of the Federal Govern-
8 ment, business, and financial, professional, retiree,
9 labor, women’s, and other appropriate organizations
10 in assisting and protecting pension plan participants,
11 including—

12 “(A) serving as a focal point for, and ac-
13 tively seeking out, the receipt of information
14 with respect to the policies and activities of the
15 Federal Government, business, and such organi-
16 zations which affect such participants,

17 “(B) identifying significant problems for
18 pension plan participants and the capabilities of
19 the Federal Government, business, and such or-
20 ganizations to address such problems, and

21 “(C) developing proposals for changes in
22 such policies and activities to correct such prob-
23 lems, and communicating such changes to the
24 appropriate officials,

1 “(2) promote the expansion of pension plan cov-
2 erage and the receipt of promised benefits by in-
3 creasing the awareness of the general public of the
4 value of pension plans and by protecting the rights
5 of pension plan participants, including—

6 “(A) enlisting the cooperation of the public
7 and private sectors in disseminating informa-
8 tion, and

9 “(B) forming private-public partnerships
10 and other efforts to assist pension plan partici-
11 pants in receiving their benefits,

12 “(3) advocating for the full attainment of the
13 rights of pension plan participants, including by
14 making pension plan sponsors and fiduciaries aware
15 of their responsibilities,

16 “(4) giving priority to the special needs of low
17 and moderate income participants,

18 “(5) developing needed information with respect
19 to pension plans, including information on the types
20 of existing pension plans, levels of employer and em-
21 ployee contributions, vesting status, accumulated
22 benefits, benefits received, and forms of benefits,
23 and

24 “(6) pursuing claims on behalf of participants
25 and beneficiaries and providing appropriate assist-

1 ance in the resolution of disputes between partici-
2 pants and beneficiaries and pension plans, including
3 assistance in obtaining settlement agreements.

4 “(c) REPORTS.—

5 “(1) ANNUAL REPORT.—Not later than Decem-
6 ber 31 of each calendar year, the Pension Partici-
7 pant Advocate shall report to the Committee on
8 Education and the Workforce of the House of Rep-
9 resentatives and the Committee on Health, Edu-
10 cation, Labor, and Pensions of the Senate on its ac-
11 tivities during the fiscal year ending in the calendar
12 year. Such report shall—

13 “(A) identify significant problems the Ad-
14 vocate has identified,

15 “(B) include specific legislative and regu-
16 latory changes to address the problems, and

17 “(C) identify any actions taken to correct
18 problems identified in any previous report.

19 The Advocate shall submit a copy of such report to
20 the Secretary and any other appropriate official at
21 the same time it is submitted to the committees of
22 Congress.

23 “(2) SPECIFIC REPORTS.—The Pension Partici-
24 pant Advocate shall report to the Secretary or any
25 other appropriate official any time the Advocate

1 identifies a problem which may be corrected by the
2 Secretary or such official.

3 “(3) REPORTS TO BE SUBMITTED DIRECTLY.—

4 The report required under paragraph (1) shall be
5 provided directly to the committees of Congress
6 without any prior review or comment than the Sec-
7 retary or any other Federal officer or employee.

8 “(d) SPECIFIC POWERS.—

9 “(1) RECEIPT OF INFORMATION.—Subject to
10 such confidentiality requirements as may be appro-
11 priate, the Secretary and other Federal officials
12 shall, upon request, provide such information (in-
13 cluding plan documents) as may be necessary to en-
14 able the Pension Participant Advocate to carry out
15 the Advocate’s responsibilities under this section.

16 “(2) APPEARANCES.—The Pension Participant
17 Advocate may represent the views and interests of
18 pension plan participants before any Federal agency,
19 including, upon request of a participant, in any pro-
20 ceeding involving the participant.

21 “(3) CONTRACTING AUTHORITY.—In carrying
22 out responsibilities under subsection (b)(5), the Pen-
23 sion Participant Advocate may, in addition to any
24 other authority provided by law—

1 “(A) contract with any person to acquire
 2 statistical information with respect to pension
 3 plan participants, and

4 “(B) conduct direct surveys of pension
 5 plan participants.”

6 (b) CONFORMING AMENDMENT.—The table of con-
 7 tents for title III of such Act is amended by adding at
 8 the end the following:

“Subtitle C—Pension Participant Advocacy
 “3051. Office of Pension Participant Advocacy.”.

9 (c) EFFECTIVE DATE.—The amendment made by
 10 this section shall take effect on January 1, 2003.

11 **SEC. 545. ADDITIONAL CRIMINAL PENALTIES.**

12 Section 501 of the Employee Retirement Income Se-
 13 curity Act of 1974 (29 U.S.C. 1131) is amended—

14 (1) by inserting “(a)” after “SEC. 501.”;

15 (2) by striking “\$5,000” and inserting
 16 “\$50,000” and by striking “\$100,000” and insert-
 17 ing “\$500,000”;

18 (2) by adding at the end the following new sub-
 19 section:

20 “(b) Any person described in subsection (a) of section
 21 532 of the Investors’ and Employees’ Bill of Rights Act
 22 of 2002 who willfully violates such section or section
 23 104(d) or causes an individual account plan to fail to meet

1 the requirements of section 409A of the Internal Revenue
2 Code of 1986 shall upon conviction be fined not more than
3 \$500,000 or imprisoned not more than one year, or
4 both.”.

5 **SEC. 546. STUDY REGARDING INSURANCE SYSTEM FOR IN-**
6 **DIVIDUAL ACCOUNT PLANS.**

7 (a) STUDY.—As soon as practicable after the date of
8 the enactment of this Act, the Pension Benefit Guaranty
9 Corporation shall contract to carry out a study relating
10 to the establishment of an insurance system for individual
11 account plans. In conducting such study, the Corporation
12 shall consider—

13 (1) the feasibility and impact of such a system,
14 and

15 (2) options for developing such a system.

16 (b) REPORT.—Not later than 3 years after the date
17 of the enactment of this Act, the Corporation shall report
18 the results of its study, together with any recommenda-
19 tions for legislative changes, to the Committee on Edu-
20 cation and the Workforce and the Committee on Ways and
21 Means of the House of Representatives and the Committee
22 on Health, Education, Labor, and Pensions and the Com-
23 mittee on Finance of the Senate.

1 **Subtitle F—Investment Advice for**
2 **Participants and Beneficiaries**

3 **SEC. 551. INDEPENDENT INVESTMENT ADVICE.**

4 (a) IN GENERAL.—Section 404(c)(1) of the Em-
5 ployee Retirement Income Security Act of 1974 (29
6 U.S.C. 1104(c)(1)) (as amended by section 542(b) of this
7 Act) is amended further—

8 (1) by redesignating subparagraphs (A) and
9 (B) as clauses (i) and (ii), respectively, and by in-
10 serting “(A)” after “(c)(1)”; and

11 (2) by adding at the end the following new sub-
12 paragraphs:

13 “(B)(i) In the case of a pension plan described in sub-
14 paragraph (A) which provides investment in employer se-
15 curities as at least one option for investment of plan assets
16 at the direction of the participant or beneficiary, such plan
17 shall make available to the participant or beneficiary the
18 services of a qualified fiduciary adviser for purposes of
19 providing investment advice described in section
20 3(21)(A)(ii) regarding investment in such securities.

21 “(ii) No person who is otherwise a fiduciary shall be
22 liable by reason of any investment advice provided by a
23 qualified fiduciary adviser pursuant to a request under
24 clause (i) if—

1 “(I) the plan provides for selection and moni-
2 toring of such adviser in a prudent and effective
3 manner, and

4 “(II) such adviser is a named fiduciary under
5 the plan in connection with the provision of such ad-
6 vice.

7 “(iii) Subparagraph (A)(ii) shall not apply with re-
8 spect to a fiduciary of a plan in connection with the exer-
9 cise of control by a participant or beneficiary over the as-
10 sets in his account if—

11 “(I) such exercise of control is undertaken pur-
12 suant to investment advice described in section
13 3(21)(A)(ii) provided by such fiduciary, or

14 “(II) at the time of such exercise of control, the
15 plan fails to meet the requirements of clause (i).

16 “(C) For purposes of subparagraph (B)—

17 “(i) The term ‘qualified fiduciary adviser’
18 means, with respect to a plan, a person who—

19 “(I) is a fiduciary of the plan by reason of
20 the provision of qualified investment advice by
21 such person to a participant or beneficiary,

22 “(II) has no material interest in, and no
23 material affiliation or contractual relationship
24 with any third party having a material interest

1 in, the security or other property with respect
2 to which the person is providing the advice,

3 “(III) meets the qualifications of clause
4 (ii), and

5 “(IV) meets the additional requirements of
6 clause (iii).

7 “(ii) A person meets the qualifications of this
8 subparagraph if such person—

9 “(I) is registered as an investment ad-
10 viser under the Investment Advisers Act of
11 1940 (15 U.S.C. 80b–1 et seq.),

12 “(II) if not registered as an invest-
13 ment adviser under such Act by reason of
14 section 203A(a)(1) of such Act (15 U.S.C.
15 80b–3a(a)(1)), is registered under the laws
16 of the State in which the fiduciary main-
17 tains its principal office and place of busi-
18 ness, and, at the time the fiduciary last
19 filed the registration form most recently
20 filed by the fiduciary with such State in
21 order to maintain the fiduciary’s registra-
22 tion under the laws of such State, also
23 filed a copy of such form with the Sec-
24 retary,

1 “(III) is registered as a broker or
2 dealer under the Securities Exchange Act
3 of 1934 (15 U.S.C. 78a et seq.),

4 “(IV) is a bank or similar financial in-
5 stitution referred to in section 408(b)(4),

6 “(V) is an insurance company quali-
7 fied to do business under the laws of a
8 State, or

9 “(VI) is any other comparable entity
10 which satisfies such criteria as the Sec-
11 retary determines appropriate.

12 “(iii) A person meets the additional re-
13 quirements of this clause if every individual who
14 is employed (or otherwise compensated) by such
15 person and whose scope of duties includes the
16 provision of qualified investment advice on be-
17 half of such person to any participant or bene-
18 ficiary is—

19 “(I) a registered representative of
20 such person,

21 “(II) an individual described in sub-
22 clause (I), (II), or (III) of clause (i), or

23 “(III) such other comparable qualified
24 individual as may be designated in regula-
25 tions of the Secretary.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to investment advice
3 provided in plan years beginning on or after January 1,
4 2003.

5 **SEC. 552. TAX TREATMENT OF QUALIFIED RETIREMENT**
6 **PLANNING SERVICES.**

7 (a) IN GENERAL.—Subsection (m) of section 132 of
8 the Internal Revenue Code of 1986 (defining qualified re-
9 tirement services) is amended by adding at the end the
10 following new paragraph:

11 “(4) NO CONSTRUCTIVE RECEIPT.—No amount
12 shall be included in the gross income of any em-
13 ployee solely because the employee may choose be-
14 tween any qualified retirement planning services pro-
15 vided by a qualified investment advisor and com-
16 pensation which would otherwise be includible in the
17 gross income of such employee. The preceding sen-
18 tence shall apply to highly compensated employees
19 only if the choice described in such sentence is avail-
20 able on substantially the same terms to each mem-
21 ber of the group of employees normally provided
22 education and information regarding the employer’s
23 qualified employer plan.”.

24 (b) CONFORMING AMENDMENTS.—

1 (1) Section 403(b)(3)(B) of such Code is
 2 amended by inserting “132(m)(4),” after
 3 “132(f)(4),”.

4 (2) Section 414(s)(2) of such Code is amended
 5 by inserting “132(m)(4),” after “132(f)(4),”.

6 (3) Section 415(c)(3)(D)(ii) of such Code is
 7 amended by inserting “132(m)(4),” after
 8 “132(f)(4),”.

9 (c) EFFECTIVE DATE.—The amendment made by
 10 this section shall apply to taxable years beginning after
 11 December 31, 2002.

12 **Subtitle G—General Provisions**

13 **SEC. 561. GENERAL EFFECTIVE DATE OF TITLE.**

14 (a) IN GENERAL.—Except as otherwise provided in
 15 this title, the amendments made by this title shall apply
 16 with respect to plan years beginning on or after January
 17 1, 2003.

18 (b) SPECIAL RULE FOR COLLECTIVELY BARGAINED
 19 PLANS.—In the case of a plan maintained pursuant to 1
 20 or more collective bargaining agreements between em-
 21 ployee representatives and 1 or more employers ratified
 22 on or before the date of the enactment of this Act, sub-
 23 section (a) shall be applied to benefits pursuant to, and
 24 individuals covered by, any such agreement by substituting

1 for “January 1, 2003” the date of the commencement of
2 the first plan year beginning on or after the earlier of—

3 (1) the later of—

4 (A) January 1, 2004, or

5 (B) the date on which the last of such col-
6 lective bargaining agreements terminates (de-
7 termined without regard to any extension there-
8 of after the date of the enactment of this Act),
9 or

10 (2) January 1, 2005.

11 **SEC. 562. PLAN AMENDMENTS.**

12 If any amendment made by this title requires an
13 amendment to any plan, such plan amendment shall not
14 be required to be made before the first plan year beginning
15 on or after the effective date specified in section 561 of
16 this Act, if—

17 (1) during the period after such amendment
18 made by this title takes effect and before such first
19 plan year, the plan is operated in accordance with
20 the requirements of such amendment made by this
21 title, and

22 (2) such plan amendment applies retroactively
23 to the period after such amendment made by this
24 title takes effect and before such first plan year.

○